

ESTTA Tracking number: **ESTTA640643**

Filing date: **11/21/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91206212
Party	Defendant entrotech, inc.
Correspondence Address	LISA M. GRIFFITH FISH & RICHARDSON P O BOX 1022 MINNEAPOLIS, MN 55440 1022 UNITED STATES tmdoctc@fr.com, hickey@fr.com, martens@fr.com, dylan-hyde@fr.com, mor- ris@fr.com
Submission	Motion to Compel Discovery
Filer's Name	Erin M. Hickey
Filer's e-mail	tmdoctc@fr.com, hickey@fr.com, martens@fr.com, dylan-hyde@fr.com, mor- ris@fr.com
Signature	/erin m hickey/
Date	11/21/2014
Attachments	2014-11-21 (FINAL) Mot to Compel + Exhibits A - J.pdf(2281246 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial Nos.:

85/499,349 for the mark **CHLORADERM**
85/499,345 for the mark **CHLORABSORB**
85/499,337 for the mark **CHLORABOND**
85/499,332 for the mark **CHLORADRAPE**

Filed on December 19, 2011

Published in the *Official Gazette* on May 29, 2012

CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC.,

Applicant.

Combined Opposition
Proceeding No. 91-206,212

**APPLICANT'S MOTION TO COMPEL DISCOVERY,
SUSPEND AND RE-SET ALL DEADLINES, AND RE-SCHEDULE THE DEPOSITION
OF OPPOSER CURRENTLY SCHEDULED FOR DECEMBER 5, 2014¹**

¹ Applicant's counsel remains committed to the Board's Orders regarding discovery in this proceeding, but respectfully requests the Board to suspend the deposition of Opposer, which Applicant noticed under Rule 30(b)(6) of the Federal Rules of Civil Procedure in September 2014, until the Board has resolved the issues raised in this Motion to Compel and to re-schedule the deposition at that time. Not only are several key Topics of Examination in dispute, but, to the extent the Board rules in Applicant's favor, Applicant's counsel also will need the documents Applicant has requested in advance of the deposition of Opposer. In addition, Applicant requests that the close of discovery, currently scheduled for December 8, 2014, be suspended and re-set for a date briefly following the new date of the deposition of Opposer's witness to allow Applicant time to propound any follow-on discovery that it believes necessary after receiving any additional documents from Opposer and having deposed Opposer's witness.

Under Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant Entrotech Life Sciences, Inc. ("Applicant") moves the Board to enter an Order compelling Opposer CareFusion 2200, Inc. ("Opposer") to:

(1) Designate a witness sufficiently knowledgeable and prepared to testify about Topic for Examination Nos. 4, 7, 13, 20-22, 28, 38, and 40 identified in Applicant's Notice of 30(b)(6) Deposition annexed hereto as ***Exhibit A***; supplement its responses and produce documents responsive to Request Nos. 75-77, 83-84, and 90 in Applicant's Second Set of Requests for Production of Documents and Things annexed hereto as ***Exhibit B***; and declare that the subject matter of these certain Topics for Examination and Requests is relevant to the issues in this proceeding and is discoverable;

(2) Designate a witness sufficiently knowledgeable and prepared to testify about the communications, or lack thereof, between Opposer and Opposer's law firm, Dreitler True, LLC, the law firm of record for Opposer's two registrations of its CHLORASHIELD mark, exclusively relating to (a) the underlying facts and bases for Opposer's alleged *bona fide* intent to use its CHLORASHIELD mark in United States commerce in connection with the products listed in its two registrations for the mark at the time Opposer filed its applications, as well as (b) the underlying facts and bases for Opposer's alleged use in United States commerce of the CHLORASHIELD mark in connection with the products listed in its two registrations as claimed in its Statements of Use, in connection with Topic for Examination No. 39 identified in Applicant's Notice of 30(b)(6), ***which Mr. Joseph R. Dreitler, an attorney with Dreitler True, LLC, seemingly would have relied upon when executing the declarations for these filings on Opposer's behalf***; supplement its responses and produce documents concerning such communications, which would be responsive to Request Nos. 78-80 in Applicant's Second Set Combined Opposition No. 91-206,212

of Requests for Production of Documents and Things, or confirm that no such documents exist; and declare the communications between Opposer and Dreitler True, LLC relating to the underlying facts and bases for Mr. Dreitler's representations in these filings not privileged. *See Exhibits A, B.*

(3) Deny Opposer's untimely general, blanket objection to Applicant's First Set of Interrogatories as "excessive" in number, given that Opposer responded to this First Set, along with specific objections, in July 2013, without ever making this general, blanket objection, and grant Applicant's request to propound an Amended Second Set of Interrogatories, beginning with Interrogatory No. 41, by the close of discovery (either December 8, 2014 or as re-set by the Board), should Applicant believe it necessary to propound.

Under Rule 2.120(e) of the Trademark Rules of Practice, counsel for Applicant and Opposer have exchanged correspondence and have held a teleconference about these issues to try to resolve them in a good-faith, efficient manner. *See* Declaration of Erin M. Hickey (the "Hickey Decl."), which is annexed hereto as ***Exhibit C***. Counsel for Applicant and Opposer, however, did not succeed in resolving these issues, and Applicant requests that the Board intervene and decide the parameters of discovery. Therefore, in connection with this Motion to Compel, and according to the Interlocutory Attorney's request during the hearing between him and counsel for Applicant and Opposer held on November 7, 2014, Applicant respectfully requests that the Board set an emergency hearing to occur after this Motion has been fully briefed by both the parties, enter a stay of this proceeding under Rule 2.120(e)(2) of the Trademark Rules of Practice pending the Board's Order, including a stay of the deposition of Opposer under Rule 30(b)(6) of the Federal Rules of Civil Procedure, which is currently

scheduled for December 5, 2014, and re-schedule that deposition for a date following the Board's Order. In support of this Motion, Applicant states as follows:

ARGUMENT

Opposer, which chose to institute this Combined Opposition proceeding ("Opposition"), has a duty to satisfy the legitimate discovery needs of its adversary. *See, generally*, T.B.M.P. § 408.01; and cases cited therein. Opposer bases this Opposition on its alleged rights in the marks CHLORAPREP and CHLORASHIELD for certain antimicrobial and antiseptic medical products. In claiming that Applicant's marks are not entitled to federal registration due to an alleged likelihood of confusion with Opposer's marks, Opposer knowingly put the strength, validity, and use of its own marks and registrations at issue.

Despite this fact, Opposer now wrongfully attempts to evade its basic discovery obligations, asserting blanket relevance objections and refusing to designate a 30(b)(6) witness and produce documents with respect to six categories of information, to which Applicant is entitled:

- (1) Consumers' perception and the industry's perception of Opposer's goods allegedly sold under its CHLORAPREP and CHLORASHIELD marks;
- (2) Opposer's other disputes, or lack thereof, involving its CHLORAPREP and CHLORASHIELD marks;
- (3) Opposer's development, manufacture, distribution, marketing, and sale of the goods allegedly sold under Opposer's CHLORASHIELD marks and Opposer's collaboration efforts with third parties with respect to same, including Avery Dennison Corporation, which, according to a press release on Opposer's website, *see Exhibit D*, collaborated with Opposer to manufacture, commercialize, and/or co-brand the goods allegedly sold under the CHLORASHIELD marks;
- (4) Opposer's communications with its law firm, Dreitler True, LLC, exclusively relating to the underlying facts and bases for the representations Mr. Dreitler, an attorney with Opposer's law firm, made when executing the declarations attesting to Opposer's alleged *bona fide* intent to use the CHLORASHIELD marks for the goods listed in the applications and Opposer's alleged actual use of those products under the CHLORASHIELD marks;

Combined Opposition No. 91-206,212

- (5) Opposer's slogan THE CHLORAPREP ADVANTAGE and its knowledge of Applicant's pending, allowed United States applications for the slogan THE CHLORHEXIDINE ADVANTAGE; and
- (6) Opposer's FDA filings relating to the goods allegedly sold in connection with the CHLORASHIELD marks, Opposer's research and testing, including pilot and/or clinical trials for the goods allegedly sold under the CHLORASHIELD marks, and any approvals from Institutional Review Boards for the goods allegedly sold under the CHLORASHIELD marks.

This information is relevant to this Opposition, and Opposer has no valid basis to withhold it. Indeed, if Opposer is allowed to withhold this information, it will prejudice Applicant severely. In particular, Applicant would be unable to obtain the proof it needs to refute or verify several of Opposer's claims in this proceeding, which, if Applicant was allowed this discovery, very well could result in Applicant filing a viable counterclaim against Opposer in this proceeding,² and to properly support Applicant's own defenses. Therefore, because Opposer should be required to fulfill its basic discovery obligations and Applicant should be given a fair opportunity to refute claims made by Opposer, present its own defenses, and investigate and, if appropriate, assert any appropriate counterclaims, the Board should compel Opposer to (a) designate a proper 30(b)(6) witness and produce responsive documents to the Topic for Examination Nos. and Requests for Production Nos. identified herein, and (b) deny Opposer's untimely general, blanket objection to Applicant's First Set of Interrogatories as "excessive" in number and grant Applicant's request to propound an Amended Second Set of Interrogatories, beginning with Interrogatory No. 41.

² "If grounds for a counterclaim are learned during the course of the opposition proceeding, the counterclaim shall be pleaded promptly after the grounds therefore are learned." 37 C.F.R. § 2.106(b)(2)(i). To the extent Opposer argues that any counterclaim filed by Applicant now would be untimely, Applicant disagrees, given that it has an obligation to conduct its due diligence before alleging a counterclaim, which it is currently trying to do, and it reserves its right to argue this point if, and when, it moves for leave to amend its Answer to the Amended Notice of Opposition to add a counterclaim(s) against Opposer.

I. INFORMATION REGARDING CONSUMERS' PERCEPTION AND THE INDUSTRY'S PERCEPTION OF OPPOSER'S GOODS ALLEGEDLY SOLD UNDER ITS "CHLORAPREP" AND "CHLORASHIELD" MARKS IS DIRECTLY RELEVANT AND SHOULD BE TESTIFIED ABOUT DURING OPPOSER'S DEPOSITION AND PRODUCED.

When Opposer asserted its registrations of its CHLORAPREP and CHLORASHIELD marks against Applicant's applications in this proceeding, it knowingly put its reputation, the strength of its own marks, and the quality of the products allegedly sold under them at issue.

Therefore, Applicant issued the following 30(b)(6) deposition examination topic:

TOPIC FOR EXAMINATION NO. 13: *The satisfaction, dissatisfaction, and/or complaints from consumers or the trade with respect to Opposer's Goods offered and/or sold in connection with Opposer's Marks.*

Opposer objects to this topic as "overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition." *See* Opposer's Responses and Objections to Applicant's 30(b)(6) Notice attached hereto as **Exhibit E**. Opposer's blanket relevancy objection is baseless. *See Axiom S.A. et al. v. Axiom Tech, Inc.*, Opp. No. 106,410, 2000 WL 1720151, at *2 (T.T.A.B. Oct. 18, 2000) ("The requirement of relevancy is generally construed liberally and discovery generously allowed unless it is clear that the information which is sought can have no possible bearing on the issues involved in the particular proceedings."). How consumers view Opposer and the goods it allegedly sells under its CHLORAPREP and CHLORASHIELD marks, which it has asserted against Applicant in this proceeding, is directly relevant to at least the following issues: (1) the strength of the CHLORAPREP and CHLORASHIELD marks, which Opposer claims to be "famous" (*see* Am. Notice of Opp. at ¶ 6); (2) the quality of the goods Opposer sells under the CHLORAPREP and CHLORASHIELD marks, which Opposer claims are "high quality" (*see id* at ¶ 10); (3) the "enviable reputation" of Opposer with respect to its CHLORAPREP and

Combined Opposition No. 91-206,212

CHLORASHIELD marks and the goods allegedly sold under them (*see id.*); and (4) the “widespread public recognition” and “great value” of the CHLORAPREP and CHLORASHIELD marks and the goods allegedly sold under them (*see id.* at ¶ 11).

Accordingly, this category of information is directly relevant to the claims and defenses in this Opposition and without it Applicant will be unable to refute or verify several of Opposer's claims in this proceeding, or even properly support Applicant's own defenses. Therefore, Applicant respectfully requests that the Board compel Opposer to designate a witness who is knowledgeable and prepared to testify on behalf of Opposer with respect to Topic No. 13.

II. INFORMATION REGARDING OPPOSER'S OTHER DISPUTES, OR LACK THEREOF, INVOLVING ITS “CHLORAPREP” AND “CHLORASHIELD” MARKS IS DIRECTLY RELEVANT AND SHOULD BE TESTIFIED ABOUT DURING OPPOSER'S DEPOSITION AND PRODUCED.

Again, when Opposer asserted its registrations of its CHLORAPREP and CHLORASHIELD marks against Applicant's applications in this proceeding, it knowingly put the strength of its own marks at issue. Therefore, Applicant issued the following 30(b)(6) deposition examination topic:

TOPIC FOR EXAMINATION NO. 28: *Prior or current disputes, including, but not limited to, litigation, arbitration, mediation, threats to use, and U.S. Patent and Trademark Office proceedings that relate, in any way, to Opposer's Marks, including, but not limited to, Medi-Flex, Inc. v. Nice-Pak Prods., Inc., 422 F. Supp.2d 1242 (D. Kansas 2006).*

While Opposer originally objected to this topic as “overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition,” *see Exhibit E*, counsel for Opposer has since agreed to allow Opposer to testify about this topic, but only to the extent of the “caption” of the proceeding and the proceeding's “outcome.” *See Appendix 6 to Exhibit C.*

Opposer cites (albeit incorrectly) a case purportedly standing for the proposition that all Opposer is required to testify about is the caption and outcome of these proceedings. *See Johnson & Johnson v. Rexall Drug Co.*, 186 U.S.P.Q. 167 (T.T.A.B. 1975). That case, however, was about interrogatories, not a deposition, and held that asking the other side, as applicant in that case had done, to “identify all documents pertaining to such litigation ... [is] too broad and burdensome.” *Id.* at 201. That is not what Applicant is asking for here, though; rather, it is merely seeking to depose Opposer about the nature of and circumstances surrounding the disputes and its efforts to enforce its mark. It is well established that this type of information is directly relevant to the strength of a mark asserted in a proceeding such as this and, aside from a proper objection based on attorney-client privilege, is entirely discoverable. *See, generally, The Chamberlain Grp., Inc. v. Lynx Indus., Inc.*, 2012 WL 9172067, at *5 (T.T.A.B. 2012) (holding that “information pertaining to prior oppositions and cancellations ... is relevant to the issue of the strength of opposer's mark, as it serves to show opposer's enforcement efforts.”); *Am. Society of Oral Surgeons v. Am. College of Oral & Maxillofacial Surgeons*, 201 U.S.P.Q. 531, 533 (T.T.A.B. 1979) (“information concerning communications or controversies between a party to a proceeding before the Board and third parties based upon the party's involved mark may be relevant for such purposes as to show admissions against interest, limitations on the party's rights in such mark, a course of conduct amounting to what could be considered an abandonment of rights in the mark, that the mark has been carefully policed and protected, etc.”); *Johnson & Johnson*, 186 U.S.P.Q. at 172 (holding that “contacts with third parties, such as through litigation or agreements, based on pleaded mark for involved goods, are relevant”); and others.

To the extent Opposer is concerned about the proprietary nature of the substance of any of these efforts, it can properly designate that portion of its testimony, and its responsive documents, according to the Protective Order in place in this proceeding. *See, e.g., Triforest Enters., Inc. v. Nalge Nunc Int'l Corp.*, Opp. No. 91-165,809, 2008 WL 885892, at *2 (T.T.A.B. Jan. 31, 2008) (holding that an objection based on confidentiality is improper when a protective order is already in place); *ATOfina Chemicals, Inc. v. Infra-red Techs., Inc.*, Opp. No. 117,175, 2001 WL 403433, at *3 (T.T.A.B. Apr. 19, 2001) (finding that a protective agreement obviates the non-producing party's confidentiality objections).

Accordingly, this category of information is directly relevant to the claims and defenses in this Opposition and without it Applicant will be unable to refute or verify several of Opposer's claims in this proceeding, or even properly support Applicant's own defenses. Therefore, Applicant respectfully requests that the Board compel Opposer to designate a witness who is knowledgeable and prepared to testify on behalf of Opposer with respect to Topic No. 28, which would not be limited to just the "caption" and outcome" of any dispute or enforcement effort.

III. INFORMATION REGARDING OPPOSER'S DEVELOPMENT, MANUFACTURE, DISTRIBUTION, MARKETING, AND SALE OF THE GOODS ALLEGEDLY SOLD UNDER OPPOSER'S "CHLORASHIELD" MARK AND OPPOSER'S COLLABORATION EFFORTS WITH THIRD PARTIES WITH RESPECT TO SAME IS DIRECTLY RELEVANT AND SHOULD BE TESTIFIED ABOUT DURING OPPOSER'S DEPOSITION AND PRODUCED.

When Opposer asserted its registrations of its CHLORASHIELD marks against Applicant's applications in this proceeding, it not only knowingly put the strength and validity of its own mark and registrations at issue, but also the alleged use of those marks and the products they cover, including their development, manufacture, distribution, marketing, and sale. Indeed, on information and belief, Opposer has collaborated with at least Avery Dennison Corporation Combined Opposition No. 91-206,212

(“Avery Dennison”) regarding the manufacture, distribution, marketing, and/or sale of the products allegedly covered by the CHLORASHIELD mark, and it is unclear if those products are sold under Opposer's CHLORASHIELD mark or Avery Dennison's BENEHOLD mark or both. Therefore, Applicant issued the following topics for examination during Opposer's 30(b)(6) deposition, as well as the following corresponding requests for production, to investigate the validity of the CHLORASHIELD registrations, and how the products covered by them were developed, are manufactured, advertised, and sold, and by whom:

TOPIC FOR EXAMINATION NO. 4: *Opposer's relationship, collaboration, business, and/or partnership with Avery Dennison Corporation, including, but not limited to, its business under the trade name Vancive Medical Technologies, with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks and any other products Opposer offers, sells, or intends to sell with chlorhexidine.*

TOPIC FOR EXAMINATION NO. 7: *The research, testing, development, manufacture, production, distribution, marketing, advertising, and/or sale of Opposer's Goods under Opposer's Marks, including, but not limited to, any and all pilot studies and/or clinical trials and any and all approvals by an Institutional Review Board, by Opposer, Avery Dennison Corporation, or any other company, organization, entity, or person.*

TOPIC FOR EXAMINATION NO. 40: *All companies, organizations, entities, or people that Opposer communicated with, solicited, encouraged, or engaged in any discussions or negotiations about researching, testing, developing, manufacturing, producing, distributing, marketing, advertising, and/or selling Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.*

REQUEST FOR PRODUCTION NO. 76: *All Documents and Things referencing or concerning Opposer's collaboration and/or partnership with Avery Dennison Corporation, including, but not limited to, its business under the trade name Vancive Medical Technologies, with respect to the products identified in Opposer's United States Registration Nos. 4[,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark from 2007 to the present, including, but not limited to, all agreements and communications from 2007 to the present.*

REQUEST FOR PRODUCTION NO. 77: *All Documents and Things referencing or concerning any other company, organization, entity, or person, with which Opposer communicated, solicited, encouraged, or engaged in any discussions or*

negotiations about researching, testing, developing, manufacturing, producing, distributing, marketing, advertising, and/or selling the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark.

REQUEST FOR PRODUCTION NO. 83: *All Documents and Things sufficient to show Opposer's capabilities to research, test, develop, manufacture, produce, distribute, market, advertise, and/or sell [the products] identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark exclusively on its own, without collaborating with any other entity or person.*

REQUEST FOR PRODUCTION NO. 84: *All Documents and Things constituting, referencing, or concerning any research, studies, pilot studies, clinical trials, or testing conducted by Opposer, Avery Dennison, or any other company, organization, entity, or person, to develop the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark.*

Opposer objects to these Topics and Requests on the ground that they are not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this proceeding. *See Exhibit E* and Opposer's Responses to Applicant's Second Set of Requests for Production attached hereto as *Exhibit F*.

Each of these Topics and Requests is well within the scope of discovery, given that Opposer has asserted the registrations of its CHLORASHIELD mark against Applicant's applications in this proceeding, and the validity of those registrations is just as relevant as the validity of Applicant's applications. *See Axiohm*, 2000 WL 1720151, at *2 ("The requirement of relevancy is generally construed liberally and discovery generously allowed unless it is clear that the information which is sought can have no possible bearing on the issues involved in the particular proceedings."). It is well-settled that each party in a TTAB proceeding may take discovery as to matters raised in the pleadings. *See, e.g.*, TBMP § 402.01.

Opposer's ability to manufacture, distribute, market, and sell the products under its CHLORASHIELD registrations on its own, and/or its efforts to collaborate with others to do the same, is directly relevant to the basis for its alleged *bona fide* intent when it filed its applications in 2010. Likewise, its collaboration with third parties—particularly Avery Dennison, with whom Opposer appears to have collaborated with eventually—to research, test, develop, manufacture, produce, distribute, market, advertise, and sell the goods allegedly sold under Opposer's CHLORASHIELD marks, which it has asserted against Applicant's applications, also is relevant to the validity of the Statements of Use Opposer filed in connection with its registrations for the CHLORASHIELD marks, as well as the advertising and trade channels for the products and the quality of the goods allegedly sold under the CHLORASHIELD marks. Essentially, it is unclear who developed, manufactures, markets, and sells the products covered by Opposer's CHLORASHIELD registrations, and Applicant is entitled to that information during discovery to evaluate any potential counterclaims it may have against those registrations, as well as to defend the claims asserted against it in this proceeding.

Accordingly, this category of information is directly relevant to the claims and defenses in this Opposition proceeding, as well as Applicant's diligent investigation of the validity of Opposer's CHLORASHIELD registrations for a possible counterclaim, and without it Applicant would be prejudiced severely. Therefore, respectfully requests that the Board compel Opposer to designate a witness who is knowledgeable and prepared to testify on behalf of Opposer with respect to Topic Nos. 4, 7, and 40. Applicant also respectfully requests that the Board compel Opposer to supplement its responses to Request for Production Nos. 76-77 and 83-84 with proper responses and produce the requested documents.

IV. COMMUNICATIONS BETWEEN OPPOSER AND DREITLER TRUE, LLC RELATING TO THE UNDERLYING FACTS AND BASES FOR THE REPRESENTATIONS MR. DREITLER MADE WHEN EXECUTING THE DECLARATIONS IN CONNECTION WITH OPPOSER'S "CHLORASHIELD" REGISTRATIONS ARE NOT PRIVILEGED AND MUST BE TESTIFIED ABOUT DURING OPPOSER'S DEPOSITION AND PRODUCED.

Again, when Opposer asserted its two registrations of its CHLORASHIELD mark against Applicant's applications in this proceeding, it knowingly put the validity of its own registrations at issue. Therefore, Applicant issued the following Topic for Examination during Opposer's 30(b)(6) deposition, as well as the following Requests for Production:

TOPIC FOR EXAMINATION NO. 39: *Filings, both trademark and patent, with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD marks.*

REQUEST FOR PRODUCTION NO. 78: *All Documents and Things that support Opposer's bases for alleging good faith, bona fide intent to use the CHLORASHIELD mark in United States commerce with respect to United States Registration Nos. 4,495,083 and 4,488,745 at the time Opposer applied to register the marks on June 1, 2010.*

REQUEST FOR PRODUCTION NO. 79: *All Documents and Things that support Opposer's basis for filing its Statement of Use for the CHLORASHIELD mark in United States commerce with respect to United States Registration No. 4,488,745 on December 11, 2013 and the basis Opposer's counsel of record had for signing the declaration in support of same.*

REQUEST FOR PRODUCTION NO. 80: *All Documents and Things that support Opposer's basis for filing its Statement of Use for the CHLORASHIELD mark in United States commerce with respect to United States Registration No. 4,495,083 on December 12, 2013 and the basis Opposer's counsel of record had for signing the declaration in support of same.*

With respect to Topic No. 39, Opposer has now agreed to permit its 30(b)(6) designee to testify regarding the filing and registration of its CHLORASHIELD marks³; however, Opposer

³ Applicant is not moving to compel at this time with respect to Opposer's patent filings.
Combined Opposition No. 91-206,212

incorrectly asserts that any communications between Opposer and Dreitler True, LLC regarding the underlying facts and bases for the representations Mr. Dreitler made about Opposer's alleged *bona fide* intent to use the CHLORASHIELD mark for the products in its registrations when it filed them, as well as the representations Mr. Dreitler made about Opposer's alleged actual use of the mark sufficient to support its Statements of Use, in the declarations he executed are privileged and information regarding such communications should be withheld. Likewise, although Opposer claims it has produced documents responsive to Request for Production Nos. 78, 79, and 80, it again incorrectly asserts that communications between Opposer and its counsel regarding this information are privileged and, on that basis, refuses to produce those communications or confirm that none exist. The basis of Opposer's objection seems to be that the Trademark Rules of Practice allow an attorney to execute these types of documents on behalf of their clients and that, as a result, they also remain privileged. *See Appendix 6 to Exhibit C.*

To be clear, Applicant is not disputing that an attorney *can* execute these documents on behalf of its client; rather, what it is disputing is that, *if* the client allows the attorney to sign on its behalf, then the communications between the client and the attorney and its firm exclusively relating to the attorney's secondhand knowledge about the underlying facts and bases he or she had for making these representations on behalf of the client are discoverable. Indeed, if it were not, then wouldn't all applicants choose to hide behind their outside counsel in making representations under oath to the Trademark Office? Opposer's objections based on attorney-client privilege, with respect to this limited issue, have no merit.

Courts that have analyzed similar fact patterns where outside counsel signed declarations attesting to facts on behalf of their clients have determined that communications between the clients and their counsel regarding the underlying facts and bases for the outside counsel making

Combined Opposition No. 91-206,212

such representations under oath in the declarations are not privileged and are discoverable. For example, in *Miyano Machinery USA, Inc. v. Miyano Hitech Machinery, Inc.*, the plaintiff's attorney executed a declaration as to the plaintiff's continued use of a trademark to support the renewal of the plaintiff's trademark registration, and the Court found that communications between the plaintiff and its attorney concerning the factual bases for the representations made in the attorney's declaration, including regarding the plaintiff's use of the trademark, were "not privileged and must be disclosed." 257 F.R.D. 456, 465 (N.D. Ill. 2008). *See also in re Rodriguez*, Bky No. 10-70606, 2013 WL 2450925, at *3 (S.D. Tex. June 5, 2013) (finding limited waiver of attorney-client privilege when attorney asserted personal knowledge of facts made in declaration as to evidence of validity and is a fact witness as to declaration) (citing *Computer Network Corp. v. Spohler*, 95 F.R.D. 500, 502-503 (D.D.C. 1982) (attorney-client privilege waived as to factual assertions made in an affidavit signed by client's attorney)). Notably, here, Applicant is not seeking to depose Mr. Dreitler, the signatory of these declarations, at this time; rather, it is first seeking to obtain the information it needs in a less intrusive manner: through the testimony of Opposer's corporate designee and through the documents themselves.

In this case, Opposer's counsel voluntarily executed not only the declarations in support of Opposer's alleged *bona fide* intent to use the CHLORASHIELD mark at the time of filing the applications, but also the declarations supporting the Statements of Use in connection with those applications. In other words, Opposer's outside counsel declared, under the penalty of perjury, that he had personal knowledge of Opposer's *bona fide* intent to use and actual use of the mark in United States commerce. In particular, Opposer's counsel declared that "all statements made on information and belief are believed to be true" as to the declaration in support of the Combined Opposition No. 91-206,212

applications and the Statements of Use. As a result, just like the Court held in *Miyano Machinery*, in which plaintiff's attorney executed a similar declaration attesting to the validity of plaintiff's use of a trademark, here also, the communications between Opposer and its outside counsel regarding the bases for Opposer's intent to use and actual use are not privileged and must be disclosed. And, to the extent there was ever a valid argument that privilege once existed as to these communications, which there is not, Opposer waived that privilege when its counsel chose to execute the declarations. *See in re Rodriguez*, 2013 WL 2450925, at *3; *Computer Network Corp.*, 95 F.R.D. at 502-503.

Accordingly, these communications are directly relevant to the issues in this Opposition proceeding and without them Applicant will be unable to refute or verify several of Opposer's claims in this proceeding, properly support Applicant's own defenses, and further establish its good-faith basis for any potential counterclaims against Opposer. Applicant respectfully requests that the Board compel Opposer to designate a witness who is knowledgeable and prepared to testify on behalf of Opposer with respect to the communications between Opposer and its outside counsel regarding the bases for Opposer's alleged *bona fide* intent to use its CHLORASHIELD marks and its alleged use supporting its Statements of Use filed in connection with its applications to register the CHLORASHIELD marks, as identified in Topic No. 39. Applicant also respectfully requests that, to the extent Opposer has withheld any documents responsive to Request for Production Nos. 78-80 concerning these communications on the basis of privilege, the Board compel Opposer to supplement its responses with proper responses and produce the requested documents as to this narrow category of information.

V. INFORMATION REGARDING OPPOSER'S SLOGAN "THE CHLORAPREP ADVANTAGE" AND ITS KNOWLEDGE OF APPLICANT'S PENDING, ALLOWED UNITED STATES APPLICATIONS FOR THE SLOGAN "THE

Combined Opposition No. 91-206,212

CHLORHEXIDINE ADVANTAGE” IS RELEVANT AND SHOULD BE TESTIFIED ABOUT DURING OPPOSER’S DEPOSITION.

TOPIC FOR EXAMINATION NO. 20: *The conception, development, consideration, design, selection, adoption, and first use of the slogan THE CHLORAPREP ADVANTAGE in connection with Opposer’s products.*

TOPIC FOR EXAMINATION NO. 21: *When Opposer first became aware of Applicant’s use and/or application to register its slogan THE CHLORHEXIDINE ADVANTAGE, which is the subject of United States Application Serial Nos. 85/661,172 and 85/661,170.*

TOPIC FOR EXAMINATION NO. 22: *Alternatives considered when selecting Opposer’s Marks, as well as the slogan THE CHLORAPREP ADVANTAGE, and the reasons for adopting Opposer’s Marks over such alternatives.*

Opposer objected to these topics as “overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition.” This objection is also baseless, particularly because Opposer responded to its corresponding Requests for Production, stating that it did not have any responsive documents and did not maintain its blanket objection of relevance. *See Appendix 6 to Exhibit C.* Opposer’s use of the slogan THE CHLORAPREP ADVANTAGE in connection with the products covered by its CHLORAPREP registrations is relevant to how it uses its CHLORAPREP mark, which it has asserted against Applicant in this proceeding, and its knowledge about Applicant’s pending applications to register the slogan THE CHLORHEXIDINE ADVANTAGE is also relevant to Opposer’s bad faith and lack of diligence in selecting its trademarks. Accordingly, this category of information is directly relevant to the claims and defenses in this Opposition proceeding and without it Applicant will be unable to refute or verify several of Opposer’s claims in this proceeding, or even properly support Applicant’s own defenses. Therefore, Applicant

respectfully requests that the Board compel Opposer to designate a witness who is knowledgeable and prepared to testify on behalf of Opposer with respect to Topic No. 20-22.

VI. INFORMATION REGARDING OPPOSER'S FDA FILINGS FOR ITS "CHLORASHIELD" PRODUCTS, OPPOSER'S RESEARCH AND TESTING, INCLUDING PILOT AND/OR CLINICAL TRIALS FOR THE GOODS ALLEGEDLY SOLD UNDER THE "CHLORASHIELD" MARKS, AND ANY APPROVALS FROM INSTITUTIONAL REVIEW BOARDS FOR THE GOODS ALLEGEDLY SOLD UNDER THE "CHLORASHIELD" MARKS IS DIRECTLY RELEVANT AND SHOULD BE TESTIFIED ABOUT DURING OPPOSER'S DEPOSITION AND PRODUCED.

Again, when Opposer asserted its registrations of its CHLORASHIELD marks against Applicant's applications in this proceeding, it knowingly put the strength and validity of its own marks and the validity of their registrations at issue. Therefore, Applicant issued the following topic for examination during Opposer's 30(b)(6) deposition, as well as the following requests for production⁴:

TOPIC FOR EXAMINATION NO. 38: *Filings with the Food and Drug Administration (the "FDA") with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.*

REQUEST FOR PRODUCTION NO. 75: *All Documents and Things Opposer, or any entity or person related to Opposer, filed with the Food and Drug Administration (the "FDA") with respect to the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark, including, but not limited to, written submissions, requests for information, and responses to requests for information for each year from 2007 to the present.*

REQUEST FOR PRODUCTION NO. 90: *All Documents and Things constituting, referencing, or concerning approvals by an Institutional Review Board for the products sold or intended to be sold under the CHLORASHIELD mark, for any other of Opposer's products containing the "CHLOR" or "CHLORA" prefix, and for any other of Opposer's chlorhexidine products.*

⁴ Topic No. 7 and Requests Nos. 83-84 identified in Section III are also incorporated herein by reference.

Opposer objects to these Topics and Requests for Production on the grounds that they are overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition. *See Exhibits E, F.* Regarding Topic No. 75, Opposer's counsel represents in her e-mail dated November 21, 2014 that Opposer has provided responsive documents; however, during the meet and confer, she maintained her relevance objection to this topic and indicated any production was by mistake. Therefore, Applicant keeps Topic No. 75 within this Motion to Compel, to be sure.

Opposer's filings with the FDA regarding its products covered by its CHLORASHIELD registrations, its research and testing, such as pilot studies or clinical trials, to develop the products sold under them, and any documents concerning approvals from an Institutional Review Board are relevant not only to the products allegedly manufactured and sold under the CHLORASHIELD marks, including the quality and specific chemicals and/or ingredients of the goods sold under those marks, but also, and importantly, to the validity of Opposer's registrations of its CHLORASHIELD mark.

Indeed, Applicant is investigating Opposer's alleged use of its mark for the products covered by its registrations of this mark, and information relating to its research and testing, particularly any pilot studies and clinical trials it conducted, when they were conducted, whether it shipped products bearing the CHLORASHIELD mark during them, and whether it received approvals from an Institutional Review Board stemming from such clinical trials, is relevant to Opposer's alleged use of this mark and its claim of use in its Statements of Use. *See generally* T.M.E.P. § 901.02 ("... 'the ordinary course of trade' varies from industry to industry. Thus... a pharmaceutical company that markets a drug to treat a rare disease will make... a few sales in the ordinary course of its trade; the company's shipment to clinical investigators during the Federal Combined Opposition No. 91-206,212

approval process will also be in its ordinary course of trade..."). Opposer may have relied on the same logic for its products, given that they required FDA approval; therefore, this information is relevant to Opposer's claims of use.

Moreover, Opposer has expressly acknowledged that any documents filed with the FDA and approvals from Institutional Review Boards are relevant to the claims and defenses of this case.⁵ As a result, even if Applicant's requests were somehow irrelevant, which they are not, Opposer waived its right to object, given that it propounded discovery that is essentially identical.⁶ *See, e.g., Sentrol, Inc. v. Sentex Sys., Inc.*, 231 U.S.P.Q. 666, 1986 WL 83726, at *2 (T.T.A.B. May 9, 1986) ("Inasmuch as the parties have served identical discovery requests on each other, they are constrained to answer each and every one of the discovery requests in a complete fashion.") (Internal citations omitted).

Accordingly, this category of information is directly relevant to the claims and defenses in this Opposition proceeding as well as to Applicant's good-faith investigation of a potential counterclaim against Opposer and without it Applicant will be prejudiced. Therefore, Applicant respectfully requests that the Board compel Opposer to designate a witness who is knowledgeable and prepared to testify on behalf of Opposer with respect to Topic Nos. 7 and 38. Applicant also respectfully requests that the Board compel Opposer to supplement its responses

⁵ In particular, in a letter from Opposer to Applicant dated August 26, 2013 regarding Applicant's objection to Opposer's Interrogatory No. 7 requesting "all documents filed with FDA for each product that Applicant intends to sell" and Opposer's Interrogatory No. 20 regarding any product sold by Applicant under Applicant's Mark "for which FDA approval has been requested or obtained," Opposer stated that documents filed with the FDA "are **relevant to the claims and defenses of this case**" and that the sale of the goods, for which FDA approval was requested, is **central to this controversy**["]. *See Exhibit G*. The same logic applies to the goods sold under Opposer's CHLORASHIELD registrations and the validity of those registrations and the declarations of use made therein.

⁶ *See also Exhibit H*, Request No. 5 from Opposer's Second Set of Requests for Production ("All documents relating to approvals by an Institutional Review Board for each product to be sold under Applicant's Marks.").

to Request for Production Nos. 75, 83-84, and 90 with proper responses and produce the requested documents.

VII. OPPOSER HAS WAIVED ITS UNTIMELY OBJECTION REGARDING THE “EXCESSIVE” NUMBER OF INTERROGATORIES IN APPLICANT’S FIRST SET OF INTERROGATORIES; THEREFORE, OPPOSER SHOULD BE COMPELLED TO RESPOND TO AN AMENDED SECOND SET OF INTERROGATORIES FROM APPLICANT, WHICH WOULD BEGIN WITH INTERROGATORY NO. 41, AND NOT BE ALLOWED TO MAINTAIN ITS REFUSAL TO CONSIDER AN AMENDED SECOND SET BASED ON AN OBJECTION IT WAIVED NEARLY 18 MONTHS AGO.

Nearly 18 months ago, in July 2013, Opposer responded to Applicant’s First Set of Interrogatories (Nos. 1-40). *See Exhibit I*. At that time, Opposer answered the Interrogatories and made specific objections, but never once made a general, blanket objection as to the number of interrogatories as exceeding the number permitted by the Trademark Rules of Practice. *See id.* In fact, it was only recently, after Applicant issued its Second Set of Interrogatories (Nos. 41-60), that Opposer objected and argued that Applicant had exceeded the number of interrogatories permitted, based on both Applicant’s First and Second Sets. *See Exhibit J*.

Any objection as to the number of interrogatories in Applicant’s First Set of Interrogatories is waived because Opposer responded to Applicant’s First Set of Interrogatories in July 2013 and did not raise the objection at that time. *See* Fed. R. Civ. P. 33(b)(4) (“The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.”); 37 C.F.R. § 2.120(d)(1) (“If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation . . . and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific

objections to the interrogatories, serve a general objection on the ground of their excessive number.”).

And while Applicant disagrees with the way in which Opposer has calculated the total number of interrogatories in Applicant's Second Set of Interrogatories, Applicant offered to serve Opposer with an Amended Second Set of Interrogatories, beginning with Interrogatory No. 41, as a way to resolve this matter fairly and efficiently, provided Opposer would agree to respond to the Amended Second Set and not maintain its general, blanket objection based on its (now-waived) claim that Applicant's First Set somehow exceeded the number of interrogatories permitted under the Trademark Rules of Practice. Opposer, however, refused to consider an Amended Second Set, choosing instead to maintain its objection that Applicant is not allowed to propound any more interrogatories in this proceeding on grounds its First Set, which Opposer responded to and never objected to the number as excessive nearly 18 months ago, was beyond the number allowed by the Trademark Rules of Practice. This objection is invalid on grounds Opposer has waived it,⁷ and Applicant seeks an Order from this Board allowing Applicant to propound an Amended Second Set of Interrogatories on Applicant, beginning with No. 41, should it believe it necessary and appropriate before the close of discovery.

CONCLUSION

For the foregoing reasons, Applicant requests that the Board compel Opposer to:

(i) designate a witness sufficiently knowledgeable and prepared to testify regarding Topic for

⁷ Opposer's additional general, blanket objection to Applicant's Second Set of Interrogatories on the grounds that they are not relevant and are "harassing" also is improper and Applicant will not address those objections unless and until they are made with specificity to the certain interrogatories to which Opposer believes they are applicable, as required under the Federal Rules and the Trademark Rules of Practice if, and when, Applicant propounds an Amended Second Set of Interrogatories.
Combined Opposition No. 91-206,212

Examination Nos. 4, 7, 13, 20-22, 28, 38-39, and 40 identified in Applicant's Notice of 30(b)(6) Deposition and to supplement its responses and produce documents responsive to Request Nos. 75-77, 82-84, 87, 90, and 98 in Applicant's Second Set of Requests for Production of Documents and Things in advance of that deposition; (ii) designate a witness sufficiently knowledgeable and prepared to testify regarding the communications between Opposer and its law firm concerning the bases for Opposer's alleged *bona fide* intent to use its CHLORASHIELD mark and its alleged use sufficient to support its Statements of Use in connection with Topic for Examination No. 39 identified in Applicant's Notice of 30(b)(6) Deposition, and to supplement its responses and produce documents concerning such communications in Request Nos. 78-80 in Applicant's Second Set of Requests for Production; and (iii) allow Applicant to propound an Amended Second Set of Interrogatories to Opposer, which would begin with Interrogatory No. 41.

Dated: November 21, 2014

Respectfully Submitted,

FISH & RICHARDSON P.C.



By: _____

Erin M. Hickey
Elizabeth Brenckman
P.O. Box 1022
Minneapolis, MN 55440
Hickey@fr.com
Brenckman@fr.com
Copy to: tmdoctc@fr.com

Attorneys for Applicant
ENTROTECH LIFE SCIENCES, INC.

Combined Opposition No. 91-206,212

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document and the corresponding Exhibits has been served this 21st day of November, 2014 by electronic mail on Opposer's attorneys of record in this proceeding, as agreed to by the parties, at the following electronic addresses:

Joseph R. Dreitler, Esq.

Mary R. True, Esq.

Dreitler True, LLC

JDreitler@ustrademarklawyer.com

MTrue@ustrademarklawyer.com

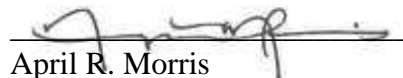

April R. Morris

Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial Nos.:

Ser. No. 85/499,349 for the mark **CHLORADERM**
Ser. No. 85/499,345 for the mark **CHLORABSORB**
Ser. No. 85/499,337 for the mark **CHLORABOND**
Ser. No. 85/499,332 for the mark **CHLORADRAPE**

Filed on December 19, 2011

Published in the *Official Gazette* on May 29, 2012

CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC.,

Applicant.

Combined Opposition No. 91-206,212

**APPLICANT'S NOTICE OF DEPOSITION OF OPPOSER
UNDER RULE 30(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE**


PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, and the corresponding Trademark Rules of Practice, Applicant Entrotech Life Sciences, Inc. ("Applicant"), by its undersigned counsel, will take the deposition, upon oral examination, of Opposer CareFusion 2200, Inc. ("Opposer") on **[TO BE DETERMINED]**, 2014, commencing at 9:30 a.m., at the offices of **[TO BE DETERMINED]**, or such other time and place as agreed to by the parties. The deposition will continue from day to day until completed. The deposition will cover the topics set forth in Schedule A annexed hereto and will be conducted before a court reporter, notary public, or other person authorized by law to administer oaths and will be recorded stenographically.

Under Rule 30(b)(6) of the Federal Rules of Civil Procedure, Opposer is required to designate one or more officers, directors, or managing agents or designate one or more other persons who consent and are knowledgeable to testify on Opposer's behalf concerning the topics set forth in Schedule A. If Opposer designates more than one person, Opposer is required to set forth, in advance, for each person designated, the topics on which the person will testify.

Dated: September 16, 2014

FISH & RICHARDSON P.C.

By:



Lisa M. Martens
Erin M. Hickey

Attorneys for Applicant
ENTROTECH LIFE SCIENCES, INC.

SCHEDULE A

Definitions

As used in this **Schedule A**, the following terms shall have the meanings indicated:

1. “Opposer” refers to CareFusion 2200, Inc., and, where applicable, its officers, directors, employees, partners, agents, corporate parent, subsidiaries, including subsidiaries of a corporate parent, affiliates, predecessors or successors, representatives, assigns, and any other person or entity acting on behalf of CareFusion 2200, Inc., or subject to the control of CareFusion 2200, Inc.
2. “Applicant” refers to Entrotech Life Sciences, Inc., and, where applicable, its officers, directors, employees, partners, agents, corporate parent, subsidiaries, including subsidiaries of a corporate parent, affiliates, predecessors or successors, representatives, assigns, and any other person or entity acting on behalf of Entrotech Life Sciences, Inc., or subject to the control of Entrotech Life Sciences, Inc.
3. “Avery Dennison Corporation” refers to Avery Dennison Corporation, a corporation duly organized and existing under the laws of the State of Delaware, and with a business address of 150 N. Orange Grove Boulevard, Pasadena, California 91103, including, but not limited to, its business under the trade name Vancive Medical Technologies, and, where applicable, its officers, directors, employees, partners, agents, corporate parent, subsidiaries, including subsidiaries of a corporate parent, affiliates, predecessors or successors, representatives, assigns, and any other person or entity acting on behalf of Avery Dennison Corporation or subject to the control of Avery Dennison Corporation.
4. “Opposer’s Marks” collectively refer to Opposer’s CHLORAPREP marks, as depicted in Registration Nos. 1,930,248 and 4,052,849 (“CHLORAPREP Marks”) and

Opposer's CHLORASHIELD marks, as depicted in Registration Nos. 4,488,745 and 4,495,083 ("CHLORASHIELD Marks").

5. "Applicant's Marks" refer to Applicant's CHLORADERM, CHLORABSORB, CHLORABOND, and CHLORADRAPE marks, as depicted in Application Serial Nos. 85/499,349, 85/499,345, 85/499,337, and 85/499,332, respectively.

6. "Opposer's Goods" include each good identified in Registration Nos. 1,930,248; 4,052,849; 4,488,745; and 4,495,083.

7. "Applicant's Goods" include the goods identified in Application Serial Nos. 85/499,349; 85/499,345; 85/499,337; and 85/499,332.

8. "Opposer's Notice of Opposition" refers to Opposer's Notice of Opposition to Applicant's Application Serial Nos. 85/499,349; 85/499,345; 85/499,337; and 85/499,332 for the marks CHLORADERM, CHLORABSORB, CHLORABOND, and CHLORADRAPE, respectively, which Opposer filed with the Trademark Trial and Appeal Board on July 24, 2012.

9. The term "concerning" means and includes supporting, embodying, setting forth, evidencing, referring to, alluding to, responding to, relating to, connected with, commencing on, in respect of, about, regarding, discussing, showing, describing mentioning, analyzing, reflecting, or constituting.

10. The terms "refer," "referring," "relate," or "relating" as used herein include, but are not limited to, the following meanings: bearing upon, concerning, constituting, discussing, describing, evidencing, identifying, mentioning, in connection with, pertaining to, respecting, regarding, responding to, or in any way factually or logically relevant to the matter described in the topic.

11. The word “including” shall mean “including but not limited to,” and shall not be used to limit any general category or description that precedes it.

12. The terms “all” and “each” shall be construed as all and each. The words “all,” “ever,” “any,” “each,” and “one or more” shall include each other whenever possible to expand, not restrict, the scope of the request.

13. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the topic all responses that might otherwise be construed to be outside of its scope.

14. The use of the singular form of any word includes the plural and vice versa.

Topics for Examination

1. Opposer's business and its history, including Opposer's predecessors in interest.

2. Opposer's corporate structure.

3. Opposer's relationship, collaboration, business, and/or partnership with Applicant, Entrofoor Medical, LLC, John S. Foor, M.D., and/or Jim McGuire.

4. Opposer's relationship, collaboration, business, and/or partnership with Avery Dennison Corporation, including, but not limited to, its business under the trade name Vancive Medical Technologies, with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks and any other products Opposer offers, sells, or intends to sell with chlorhexidine.

5. Opposer's Goods offered and/or sold under Opposer's Marks.

6. The advertising, marketing and/or promotion of Opposer's Goods under Opposer's Marks.

7. The research, testing, development, manufacture, production, distribution, marketing, advertising, and/or sale of Opposer's Goods under Opposer's Marks, including, but not limited to, any and all pilot studies and/or clinical trials and any and all approvals by an Institutional Review Board, by Opposer, Avery Dennison Corporation, or any other company, organization, entity, or person.

8. Total annual profits and revenues derived from Opposer's Goods sold under or in connection with Opposer's Marks. (For Opposer's CHLORAPREP Goods, for each year from 2004 to the present. For Opposer's CHLORASHIELD Goods, for each year from the date of first sale to the present.)

9. Total annual expenditures for advertising, marketing, and/or promotion for Opposer's Goods under Opposer's Marks. (For Opposer's CHLORAPREP Goods, for each year from 2004 to the present. For Opposer's CHLORASHIELD Goods, for each year from the date of first advertising, marketing, and/or promoting to the present.)

10. The volume of sales of Opposer's Goods under Opposer's Marks.

11. Articles, whether published or unpublished, solicited or unsolicited, press releases, accolades, awards, or other press coverage concerning Opposer's Goods offered and/or sold in connection with Opposer's Marks.

12. Consumer attitudes or perceptions of Opposer and/or Opposer's Goods offered and/or sold in connection with Opposer's Marks.

13. The satisfaction, dissatisfaction, and/or complaints from consumers or the trade with respect to Opposer's Goods offered and/or sold in connection with Opposer's Marks.

14. Any business plan, marketing plan, or strategic plan regarding Opposer's Goods offered and/or sold in connection with Opposer's Marks, including, but not limited to, Opposer's

plan or intent to expand or increase the types of goods Opposer offers for sale under Opposer's Marks.

15. The purchasers or consumers of Opposer's Goods offered and/or sold in connection with Opposer's Marks, including, but not limited to, Opposer's method of identifying and soliciting business from such purchasers or consumers and any marketing plans or proposals relating to same.

16. The channels of advertising in which Opposer markets, promotes, and advertises, and the channels of trade in which Opposer sells Opposer's Goods offered and/or sold in connection with Opposer's Marks.

17. The price of Opposer's Goods offered and/or sold under Opposer's Marks.

18. The degree of care likely to be exercised by consumers who purchase Opposer's Goods offered and/or sold in connection with Opposer's Marks.

19. The conception, development, consideration, design, selection, adoption, and first use of Opposer's Marks, including discussions with advertising, marketing, and/or branding agencies.

20. The conception, development, consideration, design, selection, adoption, and first use of the slogan THE CHLORAPREP ADVANTAGE in connection with Opposer's products.

21. When Opposer first became aware of Applicant's use and/or application to register its slogan THE CHLORHEXIDINE ADVANTAGE, which is the subject of United States Application Serial Nos. 85/661,172 and 85/661,170.

22. Alternatives considered when selecting Opposer's Marks, as well as the slogan THE CHLORAPREP ADVANTAGE, and the reasons for adopting Opposer's Marks over such alternatives.

23. Searches or investigations relating to a name or trademark incorporating the term “CHLOR” or “CHLORA,” including, but not limited to, trademark or clearance searches.

24. Opposer's awareness of third-party uses of names or trademarks incorporating the term “CHLOR” or “CHLORA.”

25. Opposer's current and intended platform of brands incorporating the prefix “CHLOR” or “CHLORA.”

26. The descriptive nature of Opposer's Marks and, if applicable, any of Opposer's other trademarks incorporating the prefix “CHLOR” or “CHLORA.”

27. Opposer's policing and enforcement activities involving Opposer's Marks.

28. Prior or current disputes, including, but not limited to, litigation, arbitration, mediation, threats to use, and U.S. Patent and Trademark Office proceedings that relate, in any way, to Opposer's Marks, including, but not limited to, *Medi-Flex, Inc. v. Nice-Pak Prods., Inc.*, 422 F. Supp.2d 1242 (D. Kansas 2006).

29. Any objection of any kind that any third party has made relating to Opposer's use of Opposer's Marks.

30. Agreements involving Opposer's Marks, including, but not limited to, all co-development or co-branding agreements, licenses, settlement agreements, and co-existence agreements.

31. Likely or possible confusion between Opposer's Marks and Applicant's Marks.

32. Instances involving persons inquiring or commenting about any relationship between Opposer and Applicant.

33. Opposer's awareness of Applicant and Applicant's Marks.

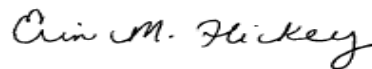
34. Opposer's alleged loss of business that will result from Applicant's Marks.

35. Opposer's competitors.
36. Opposer's responses to Applicant's First and Second Set of Interrogatories.
37. Opposer's documents produced in response to Applicant's First and Second Set of Requests for Production of Documents and Things.
38. Filings with the Food and Drug Administration (the "FDA") with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.
39. Filings, both trademark and patent, with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.
40. All companies, organizations, entities, or people that Opposer communicated with, solicited, encouraged, or engaged in any discussions or negotiations about researching, testing, developing, manufacturing, producing, distributing, marketing, advertising, and/or selling Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **APPLICANT'S NOTICE OF DEPOSITION OF OPPOSER UNDER RULE 30(b)(6) OF THE FEDERAL RULES OF CIVIL PROCEDURE** has been served by electronic mail upon Opposer's attorneys of record in this proceeding on this 16th day of September 2014 at the following electronic addresses:

Joseph R. Dreitler, Esq.
Mary R. True, Esq.
Dreitler True, LLC
jdreitler@ustrademarklawyer.com
mtrue@ustrademarklawyer.com



Erin M. Hickey

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial Nos.:

Ser. No. 85/499,349 for the mark **CHLORADERM**

Ser. No. 85/499,345 for the mark **CHLORABSORB**

Ser. No. 85/499,337 for the mark **CHLORABOND**

Ser. No. 85/499,332 for the mark **CHLORADRAPE**

Filed on December 19, 2011

Published in the *Official Gazette* on May 29, 2012

CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC.,

Applicant.

Combined Opposition No.: 91-206,212

**APPLICANT'S SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER**

Under Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant Entrotech Life Sciences, Inc. ("Applicant"), by and through its undersigned counsel, hereby requests that Opposer CareFusion 2200, Inc. ("Opposer") produce the following documents and/or tangible things within Opposer's possession, custody, or control. Such documents and things, or copies of them, should be made available at the offices of Fish & Richardson P.C., 12390 El Camino Real, San Diego, California 92130 within 30 days of Applicant serving this document upon Opposer by way of electronic mail, as agreed by counsel for the parties.

Consistent with the Federal Rules of Civil Procedure and the Trademark Rules of Practice, these requests are continuing in nature. Accordingly, if Opposer later acquires or learns about other documents or things during this proceeding that are responsive to these requests, then Opposer must supplement those documents and/or things to Applicant immediately after acquiring or learning about such documents and/or things.

Applicant hereby incorporates by reference, in their entirety, as if fully set forth herein, the Instructions, Rules of Construction, and Definitions from Applicant's First Set of Request for Production of Documents and Things dated February 13, 2013.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Request No. 67. All Documents and Things referencing or concerning the "LINUS" and/or "BLACKBEARD" projects with which Opposer was involved.

Request No. 68. All Documents and Things constituting, referencing, or concerning Opposer's communications with Applicant, Entrofoor Medical, LLC ("Entrofoor"), John S. Foor, M.D. ("Dr. Foor"), and/or Jim McGuire ("Mr. McGuire") from 2007 through 2011 with respect to developing medical products with chlorhexidine.

Request No. 69. All Documents and Things constituting, referencing, or concerning Opposer's internal communications from 2007 through 2011 with respect to collaborating and/or partnering with Applicant, Entrofoor, Dr. Foor, and/or Mr. McGuire with respect to developing medical products with chlorhexidine, including, but not limited, documents and things referencing or concerning Opposer's interest in collaborating and/or partnering with Applicant, Entrofoor, Dr. Foor, Mr. McGuire.

Request No. 70. All Documents and Things sufficient to describe in-person, telephone, and web-based meetings between Opposer and Applicant, Entrofoor, Dr. Foor, and/or Mr.

McGuire with respect to developing medical products with chlorhexidine, including all information and documents shared at such meetings from 2007 through 2011.

Request No. 71. All Documents and Things Applicant, Entrofoor, Dr. Foor, and/or Mr. McGuire provided to Opposer with respect to possibly co-developing medical products with chlorhexidine, including, but not limited to, all research, testing, studies, and prototypes, for each year from 2007 through 2011, and any documents or things referencing or concerning them, including any communications or correspondence with a third party about them.

Request No. 72. All Documents and Things referencing or concerning any concerns or issues Opposer had with respect to partnering and/or collaborating with Applicant, Entrofoor, Dr. Foor, and/or Mr. McGuire with respect to developing medical products with chlorhexidine for each year from 2007 through 2011.

Request No. 73. All Documents and Things constituting, referencing, or concerning any agreements involving or negotiated with Applicant, Entrofoor, Dr. Foor, and/or Mr. McGuire, including confidentiality agreements, non-disclosure agreements, letters of intent, development agreements, and term sheets, whether in draft or final form, from 2007 through 2011.

Request No. 74. All Documents and Things sufficient to describe the relationship between Opposer and Applicant, Entrofoor, Dr. Foor, and/or Mr. McGuire regarding the chlorhexidine products, including the reasons why the collaboration ended from 2007 to 2011.

Request No. 75. All Documents and Things Opposer, or any entity or person related to Opposer, filed with the Food and Drug Administration (the "FDA") with respect to the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's

CHLORASHIELD mark, including, but not limited to, written submissions, requests for information, and responses to requests for information for each year from 2007 to the present.

Request No. 76. All Documents and Things referencing or concerning Opposer's collaboration and/or partnership with Avery Dennison Corporation, including, but not limited to, its business under the trade name Vancive Medical Technologies, with respect to the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark from 2007 to the present, including, but not limited to, all agreements and communications from 2007 to the present.

Request No. 77. All Documents and Things referencing or concerning any other company, organization, entity, or person, with which Opposer communicated, solicited, encouraged, or engaged in any discussions or negotiations about researching, testing, developing, manufacturing, producing, distributing, marketing, advertising, and/or selling the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark.

Request No. 78. All Documents and Things that support Opposer's bases for alleging good faith, *bona fide* intent to use the CHLORASHIELD mark in United States commerce with respect to United States Registration Nos. 4,495,083 and 4,488,745 at the time Opposer applied to register the marks on June 1, 2010.

Request No. 79. All Documents and Things that support Opposer's basis for filing its Statement of Use for the CHLORASHIELD mark in United States commerce with respect to United States Registration No. 4,488,745 on December 11, 2013 and the basis Opposer's counsel of record had for signing the declaration in support of same

Request No. 80. All Documents and Things that support Opposer's basis for filing its Statement of Use for the CHLORASHIELD mark in United States commerce with respect to United States Registration No. 4,495,083 on December 12, 2013 and the basis Opposer's counsel of record had for signing the declaration in support of same.

Request No. 81. All Documents and Things constituting, referencing, or concerning all communications Opposer had internally about adopting the CHLORASHIELD mark for the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745, including, but not limited to, any communications with Applicant, Entrofloor, Dr. Floor, and/or Mr. McGuire.

Request No. 82. All Documents and Things constituting, referencing, or concerning all patents that Opposer, or any entity or person related to Opposer, has filed for the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark, and any other products Opposer may intend to sell under the CHLORASHIELD mark, including research, memoranda, correspondence, and filings with the United States Patent and Trademark Office.

Request No. 83. All Documents and Things sufficient to show Opposer's capabilities to research, test, develop, manufacture, produce, distribute, market, advertise, and/or sell identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark exclusively on its own, without collaborating with any other entity or person.

Request No. 84. All Documents and Things constituting, referencing, or concerning any research, studies, pilot studies, clinical trials, or testing conducted by Opposer, Avery Dennison, or any other company, organization, entity, or person, to develop the products

identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark.

Request No. 85. All Documents and Things sufficient to describe Opposer's platform of brands containing the prefix "CHLOR" or "CHLORA."

Request No. 86. All Documents and Things sufficient to describe Opposer's plan to market any other brands containing the prefix "CHLOR" or "CHLORA" in the future.

Request No. 87. All Documents and Things referencing or concerning Opposer's conception, evaluation, development, clearance, selection, adoption, design, first use, and/or plans for future use of THE CHLORAPREP ADVANTAGE mark, including when the mark was first adopted, the circumstances relating to its adoption, the individual or group that first selected the name, and why the name was selected.

Request No. 88. All communications between Opposer and any advertising, marketing, and/or branding agency referencing or concerning the CHLORASHIELD mark or any other of Opposer's brands containing the "CHLOR" or "CHLORA" prefix.

Request No. 89. All Documents and Things constituting, referencing, or concerning market-research studies for the products sold or intended to be sold under the CHLORASHIELD mark, for any other of Opposer's products containing the "CHLOR" or "CHLORA" prefix, and for any other of Opposer's chlorhexidine products.

Request No. 90. All Documents and Things constituting, referencing, or concerning approvals by an Institutional Review Board for the products sold or intended to be sold under the CHLORASHIELD mark, for any other of Opposer's products containing the "CHLOR" or "CHLORA" prefix, and for any other of Opposer's chlorhexidine products.

Request No. 91. All Documents and Things sufficient to establish the volume of sales for the product sold under the CHLORASHIELD mark identified in Registration No. 4,488,745 since it has entered the market.

Request No. 92. All Documents and Things sufficient to establish the volume of sales for the product sold under the CHLORASHIELD mark identified in Registration No. 4,495,083 since it has entered the market.

Request No. 93. All Documents and Things sufficient to establish the advertising expenditures for the product sold under the CHLORASHIELD mark identified in Registration No. 4,488,745 since it has entered the market.

Request No. 94. All Documents and Things sufficient to establish the advertising expenditures for the products sold or intended to be sold under the CHLORASHIELD mark identified in Registration No. 4,495,083 since it has entered the market.

Request No. 95. All Documents and Things referencing Registration Nos. or Application Serial Nos. of all trademarks or service marks, either registered or applied for, in International Classes 5 or 10 with the United States Patent and Trademark Office of which Opposer is aware that contain the letter string “CHLOR” or “CHLO.”

Request No. 96. All Documents and Things referencing Registration Nos. or Application Serial Nos. of all trademarks or service marks, either registered or applied for, with the United States Patent and Trademark Office that cover products with chlorhexidine of which Opposer is aware that contain the letter string “CHLOR” or “CHLO.”

Request No. 97. All Documents and Things referencing the descriptive nature of the CHLORAPREP mark, the CHLORASHIELD mark, or any of Opposer's marks that contain the prefix “CHLOR” or “CHLORA.”

Request No. 98. All Documents and Things referencing or concerning Applicant's use and/or application to register its slogan THE CHLORHEXIDINE ADVANTAGE, which is the subject of United States Application Serial Nos. 85/661,172 and 85/661,170.

Request No. 99. All Documents and Things supporting, tending to support, rebutting, or tending to rebut Opposer's contention in Paragraph 12 of its Notice of Opposition that "[t]he use and registration of the Chloraderm, Chlorabsorb, Chlorabond and Chloradrape trademarks by the Applicant will cause the purchasing public and those who use or are familiar with Opposer's goods to assume, erroneously, and to be confused, misled and/or deceived, that the Applicant's Chloraderm, Chlorabsorb, Chlorabond and Chloradrape marks and goods are made by or originate with, are licensed by, endorsed or sponsored by, or are in some other way associated or connected with Opposer, all to Opposer's great injury and irreparable damage." (See Notice of Opposition ¶ 12.)

Request No. 100. All Documents and Things supporting, tending to support, rebutting, or tending to rebut Opposer's contention in Paragraph 13 of Opposer's Notice of Opposition that "Applicant's filing of four (4) variations of the same mark – Chloraderm, Chlorabsorb, Chlorabond[,], and Chloradrape – for virtually identical goods, evidences a lack of bona fide intent to use the various marks filed in the applications . . ." (See Notice of Opposition ¶ 13.)

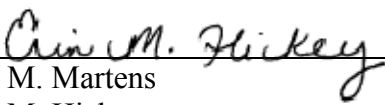
Request No. 101. All Documents and Things supporting, tending to support, rebutting, or tending to rebut Opposer's contention in Opposer's Motion to Compel filed February 24, 2014 that "Applicant, who in December 2011[,], filed four separate applications for three different types of medical products, all four beginning with the prefix "chlora" and covering specific types of FDA regulated medical products, (1) has no ongoing business in manufacturing and selling such medical products; 2) it filed the four applications when it did not have three separate

medical products under development; and 3) that Applicant has done nothing to develop three different medical products to be sold under four different chlora-formative marks since it ended its business relationship with Opposer in the summer of 2011.” (See Opposer’s Motion to Compel.)

Request No. 102. All Documents and Things Opposer identifies in, or relies upon in preparing, its responses to Applicant’s Second Set of Interrogatories to Opposer, which accompany Applicant’s Second Set of Requests for Production of Documents and Things to Opposer.

Dated: September 16, 2014

FISH & RICHARDSON P.C.

By: 
Lisa M. Martens
Erin M. Hickey

Attorneys for Applicant
ENTROTECH LIFE SCIENCES, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **APPLICANT'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER** has been served by electronic mail upon Opposer's attorney of record in this proceeding on this 16th day of September 2014 at the following electronic addresses:

Joseph R. Dreitler, Esq.
Mary R. True, Esq.
Dreitler True, LLC
jdreitler@ustrademarklawyer.com
mtrue@ustrademarklawyer.com

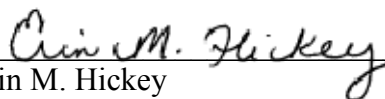

Erin M. Hickey

Exhibit C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial Nos.:

85/499,349 for the mark **CHLORADERM**
85/499,345 for the mark **CHLORABSORB**
85/499,337 for the mark **CHLORABOND**
85/499,332 for the mark **CHLORADRAPE**

Filed on December 19, 2011

Published in the *Official Gazette* on May 29, 2012

CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC.,

Applicant.

Combined Opposition
Proceeding No. 91-206,212

DECLARATION OF ERIN M. HICKEY, ESQ.

Pursuant to 28 U.S.C. § 1746, Erin M. Hickey declares as follows:

1. I am a Principal with Fish & Richardson P.C., counsel for Applicant Entrotech Life Sciences, Inc. (“Applicant”), with respect to this Opposition proceeding. I have personal knowledge of the matters below.

2. Counsel for the parties have attempted in good faith to resolve the discovery issues identified in Applicant’s Motion to Compel Discovery et al. filed herewith.

3. On November 12, 2014, I sent a letter to counsel for Opposer CareFusion 2200, Inc. (“Opposer”), identifying Opposer’s discovery deficiencies relating to Opposer’s objections

and designations to Applicant's 30(b)(6) Notice of Deposition and objections and responses to its Second Set of Requests for Production of Documents and Things, and requesting (in an e-mail attaching that letter) to meet and confer about the issues raised in my letter either Friday, November 14, 2014 or Monday, November 17, 2014. A true and correct copy of the e-mail with the letter is attached hereto as **Appendix 1**.

4. On November 14, 2014, I sent an e-mail to Opposer's counsel, addressing Opposer's improper objections to the number of interrogatories propounded by Applicant. A true and correct copy of the e-mail is attached hereto as **Appendix 2**.¹

5. On November 17, 2014, only 45 minutes before our scheduled meet and confer about these discovery deficiencies, I received a letter from Opposer's counsel in response to my November 12, 2014 letter, maintaining Opposer's refusal to produce information regarding many of the categories of information addressed in my November 12, 2014 letter. A true and correct copy of that e-mail, with the response letter attached, is attached hereto as **Appendix 4**.

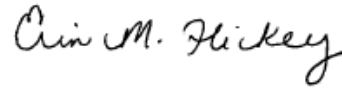
6. On November 17, 2014, I spoke with Opposer's counsel in an attempt to resolve the issues identified in the November 12, 2014 letter.² Unfortunately, the parties were unable to resolve the issues and Applicant was forced to file its Motion to Compel.

¹ During the parties' meet and confer on November 17, 2014, Opposer's counsel claimed that she had not received my e-mail of November 14, 2014, due to technological issues with her firm's e-mail servers. I re-sent the e-mail shortly after the meet and confer on November 17, 2014, and a true and correct copy of that e-mail is attached hereto as **Appendix 3**.

² On November 19, 2014, I sent a follow-up e-mail to Opposer's counsel to confirm my understanding of the issues addressed during the meet and confer. A true and correct copy of that e-mail is attached hereto as **Appendix 5**. Her e-mail response sent to me dated November 21, 2014 is attached hereto as **Appendix 6**.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 21, 2014

A handwritten signature in cursive script that reads "Erin M. Hickey".

Erin M. Hickey

APPENDIX 1

Elizabeth Brenckman

From: Erin Hickey
Sent: Wednesday, November 12, 2014 4:15 PM
To: Mary True (mtrue@ustrademarklawyer.com)
Cc: Elizabeth Brenckman; Nancy Ly
Subject: Your Client's Deficient Discovery Responses & Deficient Designations to our Notice of Deposition under Rule 30(b)(6)
Attachments: 11346862.pdf

Hi Mary,

Attached is our letter detailing the deficiencies in your client's objections and designations to the topics included in our Notice of Deposition under Rule 30(b)(6) and in its objections and responses to our Second Set of Requests for Production of Documents and Things. Please e-mail me as soon as possible to schedule a meet and confer about these issues. I'm available Friday and next Monday. As I explained in this letter, we'll be addressing your client's blanket, general objections to our Second Set of Interrogatories separately.

Thanks,
Erin



Erin M. Hickey | Principal
12390 El Camino Real
San Diego, CA 92130
Direct Dial: 858-678-4327
Fax: 858-678-5099

BY E-MAIL ONLY

November 12, 2014

Mary R. True, Esq.
Dreitler True, LLC
mtrue@ustrademarklawyer.com

Erin M. Hickey
Principal
Hickey@fr.com
858 678 4327 direct

Re: *CareFusion 2200, Inc. v. Entrotech Life Sciences, Inc.*

- (1) Notice of Invalid Objections & Deficient Designations to Applicant's Topics for Examination Annexed to Its Notice of Deposition of Opposer under Rule 30(b)(6) of the Federal Rules of Civil Procedure;**
- (2) Notice of Invalid Objections & Deficient Responses to Applicant's Second Set of Requests for Production of Documents and Things & Lack of Production; and**
- (3) Renewed Notice of Overdue Privilege Log**

Dear Mary:

We have reviewed your client's objections and designations to the Topics for Examination annexed to our Notice of Deposition of your client under Rule 30(b)(6) of the Federal Rules of Civil Procedure, its objections and responses to the Second Set of Requests for Production of Documents and Things propounded by our client, as well as your client's blanket, general objections to the Second Set of Interrogatories propounded by our client. In this letter, we address your client's invalid objections and deficient designations to the Topics for Examination and its invalid objections and deficient responses to our client's Second Set of Requests for Production of Documents and Things. We will be handling your blanket, general objections to our client's Second Set of Interrogatories separately and in due course.

Your client's boilerplate objections, deficient designations, and evasive responses represent a clear, bad-faith effort to evade its obligations during discovery. (And, most likely, also represented an attempt to override the Board's October 7, 2014 ruling regarding discovery in this proceeding, by forcing our client to move to compel your designations, responses, and documents, which very well could have resulted (and may still) in the Board suspending all deadlines in the proceeding, including the close of discovery, and re-setting them at a later date.) Moreover, you misrepresented your intent to us. In your e-mail to me dated October 6, 2014, you advised that we were "on the same page" such that, by extending your client's time in which to respond to our client's second set of written discovery and Topics for Examination by 30 days,

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

you would be providing us with substantive designations, responses, and responsive documents, and not just objections. Yet, when we received your client's objections, designations, and responses, you mostly did just the opposite – likely because the Board had just refused to extend the close of discovery, and you could no longer take advantage of the extended deadline we had granted to your client for responding to our client's written discovery and Topics for Examination, which was contingent upon the Board extending the close of discovery, as we had requested.

To avoid any doubt, we have reproduced each of the problematic topics from our client's Topics of Examination and the problematic requests from our client's Second Set of Requests for Production of Documents and Things and grouped them according to the overall category within which they fall, for easy reference.¹

TOPICS FOR EXAMINATION

Of the 40 topics we included, you objected and/or gave problematic designations to 23 of them.

1. Your Client's Objections Based Solely on the Disclosure of Confidential, Proprietary, Trade Secret, or Other Competitively Sensitive Information

TOPIC FOR EXAMINATION NO. 14: *Any business plan, marketing plan, or strategic plan regarding Opposer's Goods offered and/or sold in connection with Opposer's Marks, including, but not limited to, Opposer's plan or intent to expand or increase the types of goods Opposer offers for sale under Opposer's Marks.*

TOPIC FOR EXAMINATION NO. 15: *The purchasers or consumers of Opposer's Goods offered and/or sold in connection with Opposer's Marks, including, but not limited to, Opposer's method of identifying and soliciting business from such purchasers or consumers and any marketing plans or proposals relating to same.*

Your client objected to Topic Nos. 14 & 15 to the extent our questions would involve the disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

¹ To be clear, Opposer has objected to many of these listed topics and requests also as "overly broad and unduly burdensome," but never explained how those topics or requests are overly broad or unduly burdensome with any specificity, as required. *See, generally*, Rule 34(b)(2)(C) of the Federal Rules of Civil Procedure; Section 406.04 of the Trademark Rules of Practice. Applicant submits that each of these listed topics and requests are properly and narrowly limited, and reserves its right to discuss the same with Opposer's counsel during the requested meet and confer about the issues raised in this letter.

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

That objection is baseless here, given that we have a Protective Order in place, which is designed to safeguard this type of information. *See, e.g., Triforest Enters., Inc. v. Nalge Nunc Int'l Corp.*, Opp. No. 91-165,809, 2008 WL 885892, at *2 (T.T.A.B. Jan. 31, 2008) (holding that an objection based on confidentiality is improper when a protective order is already in place).

Moreover, your client propounded nearly identical discovery on our client – namely, Interrogatory No. 15 from its First Set of Interrogatories, which asked us to “[i]dentify and describe in detail Applicant’s customers and/or target market(s) for the goods and/or services it offers or intends to offer under each of Applicant’s Marks,” its Request for Production No. 19 from its First Request for Production of Documents and Things, which asked us to produce “[c]opies of marketing plans for each product that Applicant intends to sell under each of Applicant’s Marks,” and its Amended Request for Production No. 1, which asked us to produce “[a]ll documents relating to business plans, proposals and any other efforts to sell or offer to sell products under Applicant’s Marks” – and we did not withhold any responses or documents based on the “disclosure of confidential, proprietary, trade secret, or other competitively sensitive information” nor did we instruct Dr. Foor or Mr. Gotro not to answer any questions during their depositions based on such an objection, to the extent you asked them any questions about these topics. Rather, we designated our responses, documents, and transcripts of these depositions, as appropriate and according to the Protective Order we have in place.

Therefore, to the extent you have asserted this objection to justify failing to designate a witness who would be more knowledgeable about Topic Nos. 14 & 15 than Mr. Criedenberg and/or if you anticipate instructing Mr. Criedenberg not to answer questions about these topics or not preparing Mr. Criedenberg about these topics for the deposition, that would be improper and problematic. Please confirm immediately that Mr. Criedenberg is the individual most knowledgeable about these topics and that you will not be instructing him not to answer and will be preparing him about these topics, in full. Of course, you may request to designate the transcript of the deposition of your client with the appropriate confidentiality designation at the appropriate time.

2. Your Client’s Improper & Deficient Designations for a Total of Eight Topics & Objection Regarding Relevance for Topic Nos. 2 & 12

TOPIC FOR EXAMINATION NO. 2: *Opposer’s corporate structure.*

Your client responded by objecting to this topic as “overly broad and not reasonably calculated to lead to the discovery of admissible evidence” and by identifying Mr. Criedenberg “to generally address topics regarding Opposer’s corporate structure of which he has knowledge.” (emphasis added).

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

TOPIC FOR EXAMINATION NO. 12: *Consumer attitudes or perceptions of Opposer and/or Opposer's Goods offered and/or sold in connection with Opposer's Marks.*

Your client responded by objecting to this topic "as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition" and by identifying Mr. Creidenberg "as a person **who may have personal knowledge** as to this topic." (emphasis added).

TOPIC FOR EXAMINATION NO. 19: *The conception, development, consideration, design, selection, adoption, and first use of Opposer's Marks, including discussions with advertising, marketing, and/or branding agencies.*

Your client responded by identifying Mr. Creidenberg "as a person **who may have some historical knowledge regarding this topic.**" (emphasis added).

TOPIC FOR EXAMINATION NO. 29: *Any objection of any kind that any third party has made relating to Opposer's use of Opposer's Marks.*

Your client responded by objecting to this topic to the extent it is seeking information that is subject to the attorney-client privilege and by identifying Mr. Creidenberg "as a person **who may have personal knowledge** on this issue." (emphasis added).

TOPIC FOR EXAMINATION NO. 31: *Likely or possible confusion between Opposer's Marks and Applicant's Marks.*

Your client responded by objecting to this topic to the extent it is seeking information that is subject to the attorney-client privilege and by identifying Mr. Creidenberg "as a person **who may have personal knowledge** on this issue." (emphasis added).

TOPIC FOR EXAMINATION NO. 33: *Opposer's awareness of Applicant and Applicant's Marks.*

Your client responded by objecting to this topic to the extent it is seeking information that is subject to the attorney-client privilege and by identifying Mr. Creidenberg "as a person **who may have personal knowledge** on this issue." (emphasis added).

TOPIC FOR EXAMINATION NO. 36: *Opposer's responses to Applicant's First and Second Set of Interrogatories.*

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

Your client responded by objecting to this topic to the extent it is seeking information that is subject to the attorney-client privilege and by identifying Mr. Creidenberg “as a person who may have personal knowledge on this issue.”

TOPIC FOR EXAMINATION NO. 37: *Opposer’s documents produced in response to Applicant’s First and Second Set of Requests for Production of Documents and Things.*

Your client responded by objecting to this topic to the extent it is seeking information that is subject to the attorney-client privilege and by identifying Mr. Creidenberg “as a person who may have personal knowledge on this issue.”

Improper and Deficient Designations for Each of These Topics

The way in which you have designated Mr. Creidenberg to testify on behalf of Opposer about Topic Nos. 2, 12, 19, 29, 31, 33, 36 & 37 is improper and deficient. As you are aware, an individual designated to testify at a deposition under Rule 30(b)(6) of the Federal Rules of Civil Procedure testifies on behalf of the organization. *See* T.B.M.P. § 404.06(b) (“The deponent at a Fed. R. Civ. P. 30(b)(6) deposition is the organization, and the organization speaks through the representative appearing at the deposition.”). Moreover, the representative must testify as to the information known or reasonably made available to the organization. *Id.*(emphasis added). As a result, the organization is obligated to prepare the deponent so that the deponent can give complete, knowledgeable, and binding answers to matters known to the organization. *Id.* The deponent may become knowledgeable about topics by reviewing the organization’s records. *Id.*; *see also City Nat’l Bank v. OPGI Mgmt. GP Inc./Gestion OPGI Inc.*, 106 U.S.P.Q.2d 1668, 1672 n.4 (T.T.A.B. 2013) (“Rule 30(b)(6) anticipates that a party’s designated witness will not necessarily have personal knowledge of all matters but will nonetheless offer testimony regarding information that the ‘party’ should be able to provide.”). As you also are well aware, “[t]he production of an unprepared witness is tantamount to a failure to appear” and the party may be subject to a motion to compel and/or subject to sanctions. *Id.*

Objection Regarding Relevance for Topic Nos. 2 & 12

Your client’s objection regarding relevance with respect to Topic Nos. 2 & 12 is also improper. As you are aware, Section 405.02 of the Trademark Trial and Appeal Board’s Manual of Procedure incorporates Rule 26(b)(1) of the Federal Rules of Civil Procedure such that any non-privileged information that is relevant to a claim or defense of any party is discoverable.

First, your client’s corporate structure is relevant to this proceeding, given that: (1) you once sought to amend the Notice of Opposition to include CareFusion 213 LLC, one of its alleged subsidiaries, which you claimed had a “relationship” with a company “related” to our client, thereby confirming that its corporate structure relevant; and (2) your client recently announced that it will be acquired in a “\$12.2 Billion takeover by Becton Dickinson Co,” which is also

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

relevant to this proceeding, given that that company may be controlling the goods sold under the CHLORAPREP and CHLORASHIELD marks in the near future. *See* Opposer's Request for Reconsideration dated October 17, 2014.

Second, how consumers view your client and the goods it allegedly sells under its CHLORAPREP and CHLORASHIELD marks, which it has asserted against our client in this proceeding, is directly relevant to the following non-exhaustive list of issues: (1) the strength of those marks, which you claim are "famous" in the United States in paragraph 6 of its Amended Notice of Opposition; (2) the quality of the goods its sells under those marks, which you claim to be "high quality" in paragraph 10 of the Amended Notice of Opposition; (3) the "enviable reputation" of your client with respect to its CHLORAPREP and CHLORASHIELD marks and the goods allegedly sold under them, as you claim in paragraph 10 of the Amended Notice of Opposition; and (4) the "widespread public recognition" and "great value" of CHLORAPREP and CHLORASHIELD marks and the goods allegedly sold under them, which you claim in paragraph 11 of the Amended Notice of Opposition.

Accordingly, please confirm immediately that you will be preparing Mr. Criedenberg about each of these topics fully or designate a witness who is most knowledgeable to testify on behalf of your client, the Opposer in this proceeding, about them.

3. Your Client's Unspecified Objection & Misleading Response

TOPIC FOR EXAMINATION NO. 25: *Opposer's current and intended platform of brands incorporating the prefix "CHLOR" or "CHLORA."*

Your client responded with the following: "Objection. Opposer states that it does not have a platform of brands containing the prefix 'CHLOR[.]'" Subject to and without waiving any objections, Opposer identifies Jan Creidenberg."

Whatever objection you have here, you have not clearly specified what it is, making it invalid and deficient. To the extent your client's objection is that "it does not have a platform of brands containing the prefix 'CHLOR,'" that objection is also invalid, deficient, and misleading, given that your client currently claims to have two brands incorporating the "CHLOR" prefix – CHLORAPREP and CHLORASHIELD – which could constitute a "platform," and your client could intend to launch more brands with either the "CHLOR" or "CHLORA" prefix in the future. This information is directly relevant, among other issues, to the strength of your client's marks that it has asserted against our client's applications in this proceeding – in particular, whether your client is developing a family of such marks and how likely it is that our client's proposed marks would be confused with them as a result.

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

Therefore, to the extent you have asserted this objection to justify failing to designate a witness who would be more knowledgeable about Topic No. 25 than Mr. Criedenberg and/or if you anticipate instructing Mr. Criedenberg not to answer questions about this topic or not preparing Mr. Criedenberg about this topic for the deposition, that would be improper and problematic. Please confirm immediately that Mr. Criedenberg is the individual most knowledgeable about these topics and that you will not be instructing him not to answer and will be preparing him about this topic, in full.

4. Your Client's Objections Based Primarily on Relevance

(a) Opposer's Business & Its History

TOPIC FOR EXAMINATION NO. 1: *Opposer's business and its history, including Opposer's predecessors in interest.*

Your client responded by objecting to this topic as "overly broad and not reasonably calculated to lead to the discovery of admissible evidence" and by identifying Mr. Criedenberg "to address this topic on behalf of the CareFusion business unit responsible for the products sold by Opposer under Opposer's Marks." This designation is deficient in that we will be seeking testimony about your client's takeover by Becton Dickinson Co., as it relates to your client's goods allegedly sold under its CHLORAPREP and CHLORASHIELD marks, and the its intent (or the intent of Becton Dickinson Co.) for such goods in the future. Therefore, please confirm immediately that Mr. Criedenberg is the individual most knowledgeable about this topic and that you will not be instructing him not to answer and will be preparing him about this topic, as specified here.

(b) Your Client's Collaboration Efforts with Third Parties Involving the Goods Allegedly Sold Under Its CHLORAPREP and CHLORASHIELD Marks

TOPIC FOR EXAMINATION NO. 4: *Opposer's relationship, collaboration, business, and/or partnership with Avery Dennison Corporation, including, but not limited to, its business under the trade name Vancive Medical Technologies, with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks and any other products Opposer offers, sells, or intends to sell with chlorhexidine.*

TOPIC FOR EXAMINATION NO. 7: *The research, testing, development, manufacture, production, distribution, marketing, advertising, and/or sale of Opposer's Goods under Opposer's Marks, including, but not limited to, any and all pilot studies and/or clinical trials and any and all approvals by an Institutional Review Board, by Opposer, Avery Dennison Corporation, or any other company, organization, entity, or person.*

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

TOPIC FOR EXAMINATION NO. 40: *All companies, organizations, entities, or people that Opposer communicated with, solicited, encouraged, or engaged in any discussions or negotiations about researching, testing, developing, manufacturing, producing, distributing, marketing, advertising, and/or selling Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.*

Your client objects to these topics on the ground that they are not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this proceeding and, with respect to Topic Nos. 7 & 40, also to the extent this topic seeks "disclosure of confidential, proprietary, trade secret, or other competitively sensitive information." Neither objection is valid.

Your client's collaboration efforts with third parties – particularly Avery Dennison Corporation, with whom your client seems to have partnered with to allegedly develop and/or market the goods allegedly sold under its CHLORASHIELD marks – to research, test, develop, manufacture, produce, distribute, market, advertise, and sell the goods allegedly sold under your client's CHLORASHIELD marks, which it has asserted against our client's applications, and the research and testing that your client, or any other entity, conducted to develop the goods allegedly sold under its registrations for its CHLORASHIELD products is relevant to the following non-exhaustive list of issues: (1) the validity of your client's registrations for its CHLORASHIELD mark; (2) how likely that mark is to be confused with our client's marks, depending on how the goods allegedly sold under the CHLORASHIELD marks are developed, manufactured, produced, distributed, advertised, and sold, as compared to how our client's goods to be sold under its marks will be; and (3) your client's bad faith intent in filing this proceeding; and (4) defending against any allegation your client may make about our client's bad-faith intent in filing its applications. Moreover, the objection to Topic Nos. 7 & 40 based on disclosure of confidential, proprietary, trade secret, or commercially sensitive information is again baseless here, given that we have a Protective Order in place, which is designed to safeguard this type of information. *See, e.g., Triforest Enters., Inc.*, 2008 WL 885892, at *2 (holding that an objection based on confidentiality is improper when a protective order is already in place).

Accordingly, please confirm immediately that you will be preparing Mr. Criedenberg about each of these topics fully or designate a witness who is most knowledgeable to testify on behalf of your client, the Opposer in this proceeding, about them.

(c) Your Client's Enforcement Efforts & Its Customers' Perceptions of Its Goods Sold Under Its CHLORAPREP and CHLORASHIELD Marks

TOPIC FOR EXAMINATION NO. 28: *Prior or current disputes, including, but not limited to, litigation, arbitration, mediation, threats to use, and U.S. Patent and*

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

Trademark Office proceedings that relate, in any way, to Opposer's Marks, including, but not limited to, Medi-Flex, Inc. v. Nice-Pak Prods., Inc., 422 F. Supp.2d 1242 (D. Kansas 2006).

Your client objects to this topic as “overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition.” That objection, however, is invalid. Your client’s enforcement efforts, or lack thereof, regarding the marks it has asserted against our client’s applications is relevant to the strength of those marks, which you have alleged in the Amended Notice of Opposition. *See, e.g., Lifetech Resources, LLC v. Myskin, Inc.*, No. 91200084, 2013 WL 3168078, *3 (T.T.A.B. Apr. 10, 2013); *see also Cornelius v. CONRAIL*, 169 F.R.D. 250, 251-252 (N.D.N.Y. 1996) (evidence of prior claims and lawsuits is relevant and discoverable). Accordingly, please confirm immediately that you will be preparing Mr. Criedenberg about this topic fully or designate a witness who is most knowledgeable to testify on behalf of your client, the Opposer in this proceeding, about it.

TOPIC FOR EXAMINATION NO. 13: *The satisfaction, dissatisfaction, and/or complaints from consumers or the trade with respect to Opposer's Goods offered and/or sold in connection with Opposer's Marks.*

Your client objects to this topic as “overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition.” This objection, however, also lacks merit. As we already have explained, how consumers view your client and the goods it allegedly sells under its CHLORAPREP and CHLORASHIELD marks, which it has asserted against our client in this proceeding, is directly relevant to the following non-exhaustive list of issues: (1) the strength of those marks, which you claim are “famous” in the United States in paragraph 6 of its Amended Notice of Opposition; (2) the quality of the goods its sells under those marks, which you claim to be “high quality” in paragraph 10 of the Amended Notice of Opposition; (3) the “enviable reputation” of your client with respect to its CHLORAPREP and CHLORASHIELD marks and the goods allegedly sold under them, as you claim in paragraph 10 of the Amended Notice of Opposition; and (4) the “widespread public recognition” and “great value” of CHLORAPREP and CHLORASHIELD marks and the goods allegedly sold under them, which you claim in paragraph 11 of the Amended Notice of Opposition.

Therefore, please confirm immediately that you will be preparing Mr. Criedenberg about this topic fully or designate a witness who is most knowledgeable to testify on behalf of your client, the Opposer in this proceeding, about it.

(d) Your Client's Slogan THE CHLORAPREP ADVANTAGE

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

TOPIC FOR EXAMINATION NO. 20: *The conception, development, consideration, design, selection, adoption, and first use of the slogan THE CHLORAPREP ADVANTAGE in connection with Opposer's products.*

TOPIC FOR EXAMINATION NO. 21: *When Opposer first became aware of Applicant's use and/or application to register its slogan THE CHLORHEXIDINE ADVANTAGE, which is the subject of United States Application Serial Nos. 85/661,172 and 85/661,170.*

TOPIC FOR EXAMINATION NO. 22: *Alternatives considered when selecting Opposer's Marks, as well as the slogan THE CHLORAPREP ADVANTAGE, and the reasons for adopting Opposer's Marks over such alternatives.*

Your client objected to these discovery requests as “overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition.” This objection is invalid. Your client's use of the slogan THE CHLORAPREP ADVANTAGE in connection with the products covered by its CHLORAPREP registrations and your client's knowledge about our client's pending applications to register the slogan THE CHLORHEXIDINE ADVANTAGE are relevant to your client's bad-faith activity as well as its extended use of its CHLORAPREP mark, which it has asserted against our client's applications in this proceeding. *See* T.B.M.P. § 402.01 (“A party may take discovery not only as to matters specifically raised in the pleadings, but also as to any matter which might serve as the basis for an additional claim, defense, or counterclaim.”). Therefore, please confirm immediately that you will be preparing Mr. Criedenberg about these topics fully or designate a witness who is most knowledgeable to testify on behalf of your client, the Opposer in this proceeding, about them.

(e) Your Client's Trademark & Patent Filings for the Products Covered by Its CHLORAPREP and CHLORASHIELD Registrations

TOPIC FOR EXAMINATION NO. 39: *Filings, both trademark and patent, with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.*

Other than attorney-client privilege, Opposer objects on the grounds that this topic is “overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition” as well as to the extent this topic seeks “disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.”

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

First, your client's registrations for its CHLORASHIELD marks, as well as the prosecution history of each of them, are directly relevant to this proceeding, given that you have asserted them against our client's applications and their validity is just as relevant as the validity of our client's applications. *See* T.B.M.P. § 402.01 ("A party may take discovery not only as to matters specifically raised in the pleadings, but also as to any matter which might serve as the basis for an additional claim, defense, or counterclaim."). Moreover, your objection based on attorney-client privilege with respect to at least the declarations made in support of the two applications and Statements of Use for your client's CHLORASHIELD registrations is also invalid. Indeed, that privilege was waived as a result of your partner, Mr. Dreitler, executing not only the declarations in support of your client's alleged *bona fide* intent to use the marks at the time of filing the applications for its CHLORASHIELD mark, but also the declarations supporting the Statements of Use in connection with those applications, which is explained in greater detail on page 18 of this letter. **Second**, your client's patent filings for its products covered by its CHLORASHIELD registrations are also relevant to following non-exhaustive list of issues: (1) the quality and specific chemicals and/or ingredients of the goods sold under those marks; and (2) your client's bad-faith activity.

Therefore, please confirm immediately that you will be preparing Mr. Criedenberg about this topic fully or designate a witness who is most knowledgeable to testify on behalf of your client, the Opposer in this proceeding, about it.

(f) Your Client's Filings with the FDA for the Products Covered by Its CHLORASHIELD Registrations

TOPIC FOR EXAMINATION NO. 38: *Filings with the Food and Drug Administration (the "FDA") with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.*

Your client objects to this topic on grounds that is "overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition" as well as to the extent this topic seeks "disclosure of confidential, proprietary, trade secret, or other competitively sensitive information." Neither objection is valid.

Your client's filings with the FDA for its products covered by its CHLORASHIELD registrations are directly relevant to the following non-exhaustive list of issues: (1) the validity of the registrations for the CHLORASHIELD marks; (2) the quality and specific chemicals and/or ingredients of the goods sold under those marks; and (3) your client's bad-faith activity. Moreover, your client has expressly acknowledged that any documents filed with the FDA are relevant to the claims and defenses of this case. Indeed, in your letter dated August 26, 2013, regarding our client's objection to Opposer's Interrogatory No. 7 requesting "all documents filed with FDA for each product that Applicant intends to sell" and Opposer's Interrogatory No. 20

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

regarding any product sold by Applicant under Applicant's Mark "for which FDA approval has been requested or obtained," you stated that documents filed with the FDA "are ***relevant to the claims and defenses of this case***" and that the sale of the goods, for which FDA approval was requested, is ***central to this controversy***["].] The same logic applies to the goods sold under your client's CHLORASHIELD registrations and the validity of those registrations. As a result, even if this request was somehow irrelevant, which it is not, Opposer has waived its right to object, given that it propounded discovery that is essentially identical. *See, e.g., Sentrol, Inc. v. Sentex Systems, Inc.*, 231 U.S.P.Q. 666, 1986 WL 83726, at *2 (T.T.A.B. May 9, 1986) ("Inasmuch as the parties have served identical discovery requests on each other, they are constrained to answer each and every one of the discovery requests in a complete fashion.") (internal citations omitted).

Therefore, please confirm immediately that you will be preparing Mr. Criedenberg about this topic fully or designate a witness who is most knowledgeable to testify on behalf of your client, the Opposer in this proceeding, about it.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Of the 34 requests we propounded, you objected and/or provided deficient responses to 16 of them.

1. Your Client's "LINUS" and/or "BLACKBEARD" Projects

REQUEST FOR PRODUCTION NO. 67: *All Documents and Things referencing or concerning the "LINUS" and/or "BLACKBEARD" projects with which Opposer was involved.*

Your client objected to this request as "overly broad and unduly burdensome" as well as to the extent it seeks information "not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence" and to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. And, your client responded that "responsive documents relating to the limited aspects of the LINUS and/or BLACKBEARD projects in which Applicant participated have been produced." This response, however, is deficient and we are entitled to documents referencing either project with which Opposer was involved, as they relate to the goods covered by Opposer's CHLORAPREP and CHLORASHIELD registrations.

2. Your Client's Collaboration Efforts with Third Parties Involving the Goods Allegedly Sold Under Its CHLORASHIELD Marks

REQUEST FOR PRODUCTION NO. 76: *All Documents and Things referencing or concerning Opposer's collaboration and/or partnership with Avery Dennison*

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

Corporation, including, but not limited to, its business under the trade name Vancive Medical Technologies, with respect to the products identified in Opposer's United States Registration Nos. 4[,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark from 2007 to the present, including, but not limited to, all agreements and communications from 2007 to the present.

REQUEST FOR PRODUCTION NO. 77: *All Documents and Things referencing or concerning any other company, organization, entity, or person, with which Opposer communicated, solicited, encouraged, or engaged in any discussions or negotiations about researching, testing, developing, manufacturing, producing, distributing, marketing, advertising, and/or selling the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark.*

REQUEST FOR PRODUCTION NO. 83: *All Documents and Things sufficient to show Opposer's capabilities to research, test, develop, manufacture, produce, distribute, market, advertise, and/or sell [the products] identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark exclusively on its own, without collaborating with any other entity or person.*

REQUEST FOR PRODUCTION NO. 84: *All Documents and Things constituting, referencing, or concerning any research, studies, pilot studies, clinical trials, or testing conducted by Opposer, Avery Dennison, or any other company, organization, entity, or person, to develop the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark.*

Your client objected to Request Nos. 76, 77, 83 & 84 on grounds they are “overly broad and unduly burdensome” and because they seek information “not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence” and to the extent they seek “disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.” These objections are not valid.

Each of these requests is well within the scope of discovery, given that your client has asserted its registrations of its CHLORASHIELD mark against our client's applications in this proceeding and the validity of those registrations is just as relevant as the validity of our client's applications. Section 402.01 of the Trademark and Appeal Board's Manual of Procedure allows each party to take discovery as to matters raised in the pleadings. Your client's collaboration efforts with third parties – particularly Avery Dennison Corporation, with whom your client seems to have partnered with to allegedly develop and/or market the goods allegedly sold under its CHLORASHIELD marks – to research, test, develop, manufacture, produce, distribute, market, advertise, and sell the goods allegedly sold under your client's CHLORASHIELD marks, which it has asserted against our client's applications, and the research and testing that

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

your client, or any other entity, conducted to develop the goods allegedly sold under its registrations for its CHLORASHIELD products is relevant to the following non-exhaustive list of issues: (1) the validity of your client's registrations for its CHLORASHIELD mark; (2) how likely that mark is to be confused with our client's marks, depending on how the goods allegedly sold under the CHLORASHIELD marks are developed, manufactured, produced, distributed, advertised, and sold, as compared to how our client's goods to be sold under its marks will be; (3) your client's bad faith intent in filing this proceeding; (4) the quality of the goods allegedly sold under the CHLORASHIELD registrations; and (5) defending against any allegation your client may make about our client's bad-faith intent in filing its applications. Moreover, the objection to these requests based on disclosure of confidential, proprietary, trade secret, or commercially sensitive information is again baseless here, given that we have a Protective Order in place, which is designed to safeguard this type of information. *See, e.g., Triforest Enters., Inc.*, 2008 WL 885892, at *2 (holding that an objection based on confidentiality is improper when a protective order is already in place). Therefore, please supplement these requests with proper responses and produce the requested documents immediately.

3. Your Client's Alleged CHLORA-Prefixed Marks

REQUEST FOR PRODUCTION NO. 86: *All Documents and Things sufficient to describe Opposer's plan to market any other brands containing the prefix "CHLOR" or "CHLORA" in the future.*

Your client objected to this request as overly broad and not reasonably calculated to lead to admissible or relevant evidence and because it seeks the disclosure of confidential, proprietary, trade secret, or other competitively sensitive information, while also responding that it does not have a platform of brands containing the prefix CHLOR.

This request is not overly broad, given that it is narrowly limited to your client's marks or intended marks incorporating the prefix "CHLORA" or "CHLOR." Your client's plans to market any other brand containing the prefix CHLOR or CHLORA are relevant to your client's the marketing and trade channels, strength and number of similar marks, and its goods. *See, generally, T.B.M.P. § 402.01* ("A party may take discovery not only as to matters specifically raised in the pleadings, but also as to any matter which might serve as the basis for an additional claim, defense, or counterclaim."). Therefore, please supplement this request with proper responses and produce the requested information immediately.

4. Your Client's Slogan THE CHLORAPREP ADVANTAGE

REQUEST FOR PRODUCTION NO. 87: *All Documents and Things referencing or concerning Opposer's conception, evaluation, development, clearance, selection, adoption, design, first use, and/or plans for future use of THE CHLORAPREP*

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

ADVANTAGE mark, including when the mark was first adopted, the circumstances relating to its adoption, the individual or group that first selected the name, and why the name was selected.

REQUEST FOR PRODUCTION NO. 98: *All Documents and Things referencing or concerning Applicant's use and/or application to register its slogan THE CHLORHEXIDINE ADVANTAGE, which is the subject of United States Application Serial Nos. 85/661,172 and 85/661,170.*

Again, your client objected to these discovery requests as “overly broad and unduly burdensome” and because they seek information “not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence” and to the extent they seek “disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. And again, neither objection is valid. Your client’s use of the slogan THE CHLORAPREP ADVANTAGE in connection with the products covered by its CHLORAPREP registrations and your client’s knowledge about our client’s pending applications to register the slogan THE CHLORHEXIDINE ADVANTAGE are relevant to your client’s bad-faith activity as well as its extended use of its CHLORAPREP mark, which it has asserted against our client’s applications in this proceeding. *See* T.B.M.P. § 402.01 (“A party may take discovery not only as to matters specifically raised in the pleadings, but also as to any matter which might serve as the basis for an additional claim, defense, or counterclaim.”). Therefore, please supplement this request with proper responses and produce the requested information immediately.

5. Your Client’s Trademark & Patent Filings for the Products Covered by Its CHLORAPREP and CHLORASHIELD Registrations

REQUEST FOR PRODUCTION NO. 82: *All Documents and Things constituting, referencing, or concerning all patents that Opposer, or any entity or person related to Opposer, has filed for the products identified in Opposer’s United States Registration Nos. 4,495,083 and 4,488,745 for Opposer’s CHLORASHIELD mark, and any other products Opposer may intend to sell under the CHLORASHIELD mark, including research, memoranda, correspondence, and filings with the United States Patent and Trademark Office.*

Your client objects to this request on the grounds that it is “overly broad and unduly burdensome” and because it seeks information “not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence” and to the extent that it seeks “disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Neither objection is valid.

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

First, your client's registrations for its CHLORASHIELD marks, as well as the prosecution history of each of them, are directly relevant to this proceeding, given that you have asserted them against our client's applications and their validity is just as relevant as the validity of our client's applications. See T.B.M.P. § 402.01 ("A party may take discovery not only as to matters specifically raised in the pleadings, but also as to any matter which might serve as the basis for an additional claim, defense, or counterclaim."). Moreover, your objection based on attorney-client privilege with respect to at least the declarations made in support of the two applications and Statements of Use for your client's CHLORASHIELD registrations is also invalid. Indeed, that privilege was waived as a result of your partner, Mr. Dreitler, executing not only the declarations in support of your client's alleged *bona fide* intent to use the marks at the time of filing the applications for its CHLORASHIELD mark, but also the declarations supporting the Statements of Use in connection with those applications, which is explained in greater detail on page 18 of this letter. **Second**, your client's patent filings for its products covered by its CHLORASHIELD registrations are also relevant to the following non-exhaustive list of issues: (1) the quality and specific chemicals and/or ingredients of the goods sold under those marks; and (2) your client's bad-faith activity.

Therefore, please supplement this request with proper responses and produce the requested information immediately.

6. Your Client's Filings with the FDA for the Products Covered by Its CHLORASHIELD Registrations

REQUEST FOR PRODUCTION NO. 75: *All Documents and Things Opposer, or any entity or person related to Opposer, filed with the Food and Drug Administration (the "FDA") with respect to the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark, including, but not limited to, written submissions, requests for information, and responses to requests for information for each year from 2007 to the present.*

Your client objects to this request on grounds that it is "overly broad and unduly burdensome" and because it seeks information "not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence" in this proceeding, and also to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. These objections are not valid. Your client's filings with the FDA for its products covered by its CHLORASHIELD registrations are directly relevant to the following non-exhaustive list of issues: (1) the validity of the registrations for the CHLORASHIELD marks; (2) the quality and specific chemicals and/or ingredients of the goods sold under those marks; and (3) your client's bad-faith activity. Moreover, your client has expressly acknowledged that any documents filed with the FDA are relevant to the claims and defenses of this case. Indeed, in your letter dated August 26, 2013, regarding our client's objection to Opposer's Interrogatory No. 7 requesting

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

“all documents filed with FDA for each product that Applicant intends to sell” and Opposer’s Interrogatory No. 20 regarding any product sold by Applicant under Applicant’s Mark “for which FDA approval has been requested or obtained,” you stated that documents filed with the FDA “are *relevant to the claims and defenses of this case*” and that the sale of the goods, for which FDA approval was requested, is *central to this controversy*[.]” The same logic applies to the goods sold under your client’s CHLORASHIELD registrations and the validity of those registrations. As a result, even if this request was somehow irrelevant, which it is not, Opposer has waived its right to object, given that it propounded discovery that is essentially identical. *See, e.g., Sentrol, Inc. v. Sentex Systems, Inc.*, 231 U.S.P.Q. 666, 1986 WL 83726, at *2 (T.T.A.B. May 9, 1986) (“Inasmuch as the parties have served identical discovery requests on each other, they are constrained to answer each and every one of the discovery requests in a complete fashion.”) (internal citations omitted). Therefore, please supplement this request with proper responses and produce the requested information immediately.

7. Your Client’s Approval(s) by an Institutional Review Board

REQUEST FOR PRODUCTION NO. 90: *All Documents and Things constituting, referencing, or concerning approvals by an Institutional Review Board for the products sold or intended to be sold under the CHLORASHIELD mark, for any other of Opposer’s products containing the “CHLOR” or “CHLORA” prefix, and for any other of Opposer’s chlorhexidine products.*

Your client objects to this request on grounds that the request is “overly broad and unduly burdensome” and because it seeks information “not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence” and to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. These objections are not valid. Approvals by an Institutional Review Board for your client’s products covered by its CHLORASHIELD registrations are directly relevant to the following non-exhaustive list of issues: (1) the validity of the registrations for the CHLORASHIELD marks; (2) the quality and specific chemicals and/or ingredients of the goods allegedly sold under your client’s CHLORA or CHLOR-prefix marks; and (3) your client’s bad-faith activity. Moreover, your client has expressly acknowledged that such documents are relevant to the claims and defenses of this case by propounding discovery that is nearly, if not, identical – namely, its Request No. 5 from its Second Set of Requests for Production of Documents and Things (“All documents relating to approvals by an Institutional Review Board for each product to be sold under Applicant’s Marks.”). As a result, your client has waived its right to object on grounds of relevance, given that it has propounded discovery that is essentially identical. *See Id.* (“Inasmuch as the parties have served identical discovery requests on each other, they are constrained to answer each and every one of the discovery requests in a complete fashion.”) (internal citations omitted). And again, the objection based on disclosure of confidential, proprietary, trade secret, or other competitively sensitive information is baseless, as already

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

explained in this letter. Therefore, please supplement this request with proper responses and produce the requested information immediately.

8. Your Client's Objections Solely Based on Its Claim that the Information Requested Is Publicly Available

REQUEST FOR PRODUCTION NO. 95: *All Documents and Things referencing Registration Nos. or Application Serial Nos. of all trademarks or service marks, either registered or applied for, in International Classes 5 or 10 with the United States Patent and Trademark Office of which Opposer is aware that contain the letter string "CHLOR" or "CHLO."*

REQUEST FOR PRODUCTION NO. 96: *All Documents and Things referencing Registration Nos. or Application Serial Nos. of all trademarks or service marks, either registered or applied for, with the United States Patent and Trademark Office that cover products with chlorhexidine of which Opposer is aware that contain the letter string "CHLOR" or "CHLO."*

Your client objected to Request Nos. 95 & 96 solely on grounds that the requests seek information "that is publicly available and can be accessed as easily by Applicant as it could be reproduced by Opposer." As you are well aware, that objection is baseless and not a valid ground for refusing to respond to discovery. *See, e.g., Bituminous Cas. Corp. v. Monument Well Corp.*, No. 06-CV-02294-WYD-MEH, 2007 WL 2712347, at *1 (D. Colo. Sept. 14, 2007) (compelling production of publicly available information); and others, including cases cited by you in your letter dated August 26, 2013. Indeed, you had the same response to us in that letter, when we objected on that ground, arguing the following in your letter dated August 26, 2013: "This objection is ... without merit: The federal courts have not recognized this rationale as a legitimate objection to discovery." Therefore, please supplement this request with proper responses and produce the requested information immediately.

9. Certain of Your Client's Objections Based on an Alleged Attorney-Client Privilege

REQUEST FOR PRODUCTION NO. 78: *All Documents and Things that support Opposer's bases for alleging good faith, bona fide intent to use the CHLORASHIELD mark in United States commerce with respect to United States Registration Nos. 4,495,083 and 4,488,745 at the time Opposer applied to register the marks on June 1, 2010.*

REQUEST FOR PRODUCTION NO. 79: *All Documents and Things that support Opposer's basis for filing its Statement of Use for the CHLORASHIELD mark in United States commerce with respect to United States Registration No. 4,488,745 on December*

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

11, 2013 and the basis Opposer's counsel of record had for signing the declaration in support of same.

REQUEST FOR PRODUCTION NO. 80: *All Documents and Things that support Opposer's basis for filing its Statement of Use for the CHLORASHIELD mark in United States commerce with respect to United States Registration No. 4,495,083 on December 12, 2013 and the basis Opposer's counsel of record had for signing the declaration in support of same.*

Your client objects to these requests because they are “unduly burdensome” and because they seek information “not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence” and also “to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information” or information subject to the attorney-client privilege. **First**, your client's objection about relevance has zero merit; your client has asserted these registrations against our client's applications and their validity is just as relevant as the validity of our client's applications. **Second**, your objection about the disclosure of “confidential, proprietary, trade secret, or other competitively sensitive information” is likewise baseless, given that we have a Protective Order in place, which is designed to safeguard this type of information. *See, e.g., Triforest*, 2008 WL 885892, at *2 (holding that an objection based on confidentiality is improper when a protective order is already in place).

Moreover, your objection based on attorney-client privilege is invalid. Indeed, that privilege was waived as a result of Mr. Dreitler executing not only the declarations in support of your client's alleged *bona fide* intent to use the marks at the time of filing the applications for its CHLORASHIELD mark, but also the declarations supporting the Statements of Use in connection with those applications. In other words, Mr. Dreitler declared, under the penalty of perjury, that he had personal knowledge of your client's *bona fide* intent to use and actual use of the mark in United States commerce in connection with the products covered by them. In particular, Mr. Dreitler declared that “all statements made on information and belief are believed to be true” as to the declaration in support of the applications and the Statements of Use. As a result, Mr. Dreitler has become a fact witness and has waived the attorney-client privilege with respect to these specific, limited issues. *See, e.g., In re Rodriguez*, Bky No. 10-70606, 2013 WL 2450925, at *3 (S.D. Tex. June 5, 2013) (limited waiver of attorney-client privilege when attorney asserted personal knowledge of facts made in declaration as to evidence of validity and is a fact witness as to declaration) (citing *Computer Network Corp. v. Spohler*, 95 F.R.D. 500, 502-503 (D.D.C. 1982) (attorney-client privilege waived as to factual assertions made in an affidavit signed by client's attorney)).

Accordingly, when you respond that “responsive, non-privileged documents are produced herewith” that response is insufficient because it presumes that documents involving Mr. Dreitler and your client are privileged with respect to these specific, limited issues and do not need to be

Mary R. True, Esq.
Dreitler True, LLC
November 12, 2014

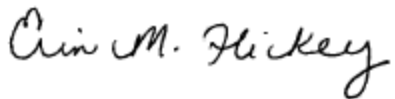
produced. To the contrary, they are not privileged and they need to be produced. Therefore, to the extent you withheld any documents based on this alleged attorney-client privilege, please supplement your response and produce the responsive documents immediately. We also reserve the right to depose Mr. Dreitler by December 8, 2014 about these issues, should we believe it appropriate and necessary after receiving your responsive documents.

PRIVILEGE LOG

To date, we have not received a privilege log from your client, despite the fact that it may have withheld documents based on allegedly privileged information since first producing documents to us on July 16, 2013. Therefore, please produce this privilege log immediately for our review.

Please let me know immediately when you are available to discuss the issues raised in this letter this Friday or next Monday. As you are aware, the deposition of your client is scheduled to take place December 5, 2014 and we will need to have the Board intervene promptly regarding any issues we are not able to resolve timely ourselves well in advance of that deposition.

Sincerely yours,

A handwritten signature in cursive script that reads "Erin M. Hickey".

Erin M. Hickey

APPENDIX 2

Elizabeth Brenckman

From: Erin Hickey
Sent: Friday, November 14, 2014 8:39 PM
To: Mary True (mtrue@ustrademarklawyer.com)
Subject: Your Client's General, Blanket Objection to Our Client's Second Set of Interrogatories

Hi Mary,

As I mentioned in my letter dated November 12, 2014, I am writing to address your client's general, blanket objection to the number of interrogatories in our Second Set, which you claim to be "comprised of at least 147 separate requests," as exceeding the number of interrogatories allowed under the Trademark Rules of Practice.

If you recall, in addition to objecting to our Second Set as excessive in number, your client also objected to our First Set of Interrogatories as excessive, claiming that the First Set comprised "104" separate requests. You'll recall, though, that your client responded to that First Set in July 2013 with answers and only specific objections, but never made a general, blanket objection to the number of interrogatories as exceeding the amount allotted, as it appears to do now. As I'm sure you are aware, your client has waived any objection as to the number of interrogatories from that First Set, and we will not address that objection at this point. *See Fed. R. Civ. P. 33(b)(4)* ("The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure."); 37 C.F.R. Section 2.120(d)(1) ("If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation ... and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number.")

While we disagree with the way in which you have calculated the total number of interrogatories in our Second Set, we are willing to serve you with an Amended Second Set of Interrogatories, beginning with Interrogatory No. 41, as a way to resolve this matter efficiently, provided you will respond to that Amended Second Set and not maintain your general, blanket objection based on your (now waived) claim that our First Set somehow exceeded 75 interrogatories. To the extent you have any specific objections to the Amended Second Set, you can make them then, along with your responses. Your client's general, blanket objection to our Second Set of Interrogatories on grounds that they are not relevant and are "harassing" is improper and we will not address those objections until, and if, they are made with specificity to the certain interrogatories to which you believe they are applicable.

Let's discuss this matter during our meet and confer on Monday, as well.

Thanks,
Erin



Erin M. Hickey | Principal
12390 El Camino Real
San Diego, CA 92130
Direct Dial: 858-678-4327
Fax: 858-678-5099

APPENDIX 3

Elizabeth Brenckman

From: Erin Hickey
Sent: Monday, November 17, 2014 6:59 PM
To: Mary True (mtrue@ustrademarklawyer.com)
Cc: Elizabeth Brenckman
Subject: FW: Your Client's General, Blanket Objection to Our Client's Second Set of Interrogatories

Hi Mary,

I'm just re-sending this e-mail for your records, given that you didn't receive it on Friday because of issues with your e-mail system.

We understand from our meet and confer today that you will be maintaining your objection that our First Set of Interrogatories was somehow excessive in number, despite the fact that you responded to those interrogatories in July 2013 and never made this general, blanket objection to them, as required under the Rules. (To be clear, we included 40 interrogatories in that First Set, but you claim now, for the first time, that they actually totaled 104 separate requests.) We also understand that, as a result of this new and untimely objection to our First Set, you do not believe that we are entitled to propound any further interrogatories in this proceeding and will not consider an Amended Second Set of Interrogatories, beginning with Interrogatory No. 41, as we offered to propound today.

Of course, please let us know if our understanding is incorrect.

Thanks,
Erin

From: Erin Hickey
Sent: Friday, November 14, 2014 5:39 PM
To: Mary True (mtrue@ustrademarklawyer.com)
Subject: Your Client's General, Blanket Objection to Our Client's Second Set of Interrogatories

Hi Mary,

As I mentioned in my letter dated November 12, 2014, I am writing to address your client's general, blanket objection to the number of interrogatories in our Second Set, which you claim to be "comprised of at least 147 separate requests," as exceeding the number of interrogatories allowed under the Trademark Rules of Practice.

If you recall, in addition to objecting to our Second Set as excessive in number, your client also objected to our First Set of Interrogatories as excessive, claiming that the First Set comprised "104" separate requests. You'll recall, though, that your client responded to that First Set in July 2013 with answers and only specific objections, but never made a general, blanket objection to the number of interrogatories as exceeding the amount allotted, as it appears to do now. As I'm sure you are aware, your client has waived any objection as to the number of interrogatories from that First Set, and we will not address that objection at this point. *See Fed. R. Civ. P. 33(b)(4)* ("The grounds for objecting to an interrogatory must be stated with specificity. Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure."); 37 C.F.R. Section 2.120(d)(1) ("If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitation ... and is not willing to waive this basis for objection, the party shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number.")

While we disagree with the way in which you have calculated the total number of interrogatories in our Second Set, we are willing to serve you with an Amended Second Set of Interrogatories, beginning with Interrogatory No. 41, as a way to resolve this matter efficiently, provided you will respond to that Amended Second Set and not maintain your general, blanket objection based on your (now waived) claim that our First Set somehow exceeded 75 interrogatories. To the extent you have any specific objections to the Amended Second Set, you can make them then, along with your responses. Your client's general, blanket objection to our Second Set of Interrogatories on grounds that they are not relevant and are "harassing" is improper and we will not address those objections until, and if, they are made with specificity to the certain interrogatories to which you believe they are applicable.

Let's discuss this matter during our meet and confer on Monday, as well.

Thanks,
Erin



Erin M. Hickey | Principal
12390 El Camino Real
San Diego, CA 92130
Direct Dial: 858-678-4327
Fax: 858-678-5099

APPENDIX 4

April R. Morris

From: Erin Hickey
Sent: Friday, November 21, 2014 4:06 PM
To: April R. Morris
Subject: FW: CFN v. Entrotech
Attachments: CFN-Entrotech Ltr to Hickey 11-17.pdf

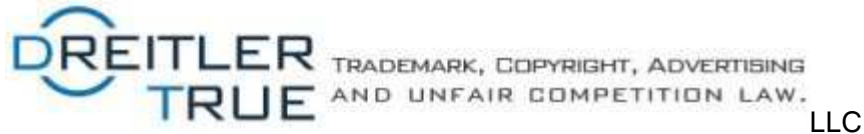
From: Mary True [mailto:mtrue@ustrademarklawyer.com]
Sent: Monday, November 17, 2014 10:07 AM
To: Erin Hickey
Cc: jdreitler@ustrademarklawyer.com
Subject: CFN v. Entrotech

Dear Erin –

Please see the attached letter responding to your correspondence from last week. Sorry to be late getting it to you, but we were switching out email servers this weekend. If you'd like to put our call off a few hours today so that you can review the attached, that's fine.

Mary

Mary R True
DREITLER TRUE LLC
19 E. KOSSUTH ST
COLUMBUS OH 43206-2001
614.449.6677
614.449.6642(direct)
513.404.5875(cell)
mtrue@ustrademarklawyer.com



19 E. Kossuth Street
Columbus, Ohio 43206
November 17, 2014

Mary R. True
Telephone: (614)(449-6643

mtrue@ustrademarklawyer.com

via email: hickey@fr.com

Erin Hickey, Esq.
Fish & Richardson
12390 El Camino Real
San Diego, CA 92130

Re: *CareFusion 2200, Inc. v. Entrotech, Inc., Opposition No. 91206212*

Dear Erin:

While reserving all rights to appropriate objections, Mr. Creidenberg will be responding on behalf of Opposer on the following topics: 1-6¹, 8-12, 14-19, 23-25, and 27-37. The deposition transcript will be designated “Trade Secret Highly Confidential” and he will only be instructed not to answer questions that seek attorney-client privileged information.

As an initial matter, it bears noting that Opposer has agreed to provide testimony and has already produced documents relating to the vast majority of Applicant’s recent discovery requests – including documents relating to Opposer’s bases for alleging its bona fide intent to use the Chlorashield mark in commerce (Requests for Production Nos. 78, 79, 80).² Indeed, in response to Applicant’s Second Set of Requests for Production – which comprised 35 separate requests, Opposer refused to provide documents only as to 8 of them, Nos. 75, 76, 77, 82, 83, 84, 90, and 98, for the reasons set forth above. The assertion of

¹ With respect to Topic Nos. 1 and 2, Mr. Creidenberg’s knowledge to speak on behalf of Opposer is limited to the portions of the company that are currently responsible for the Chloraprep line of products, and predecessors in interest thereto. No other discovery of Opposer’s corporate structure is relevant, including discovery regarding Becton Dickinson Co.’s “intent” or “plans” for products currently sold under the Chloraprep and Chlorashield marks. Such discovery is irrelevant and constitutes harassment, and the disclosure of such information likely violates SEC rules.

² Mr. Creidenberg will also be prepared to discuss these issues. The mere fact that Mr. Dreitler signed application documents as “an attorney as defined in §11.1 of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the owner” (37 CFR §§2.193(e)(1)–2.193(e)(1)(iii)) does not make him subject to deposition or waive any applicable privilege (see *infra*).



what you refer to as “boilerplate” objections is intended to preserve those objections, as you would no doubt be quick to claim that Opposer had waived them otherwise. Opposer has produced over 25,000 pages of documents since August of 2013, and it has updated its production as additional relevant documents became available (for example, documents relating to the use, marketing and sales of the Chlorashield products). Opposer has unquestionably complied with its discovery obligations throughout these proceedings.

And it bears repeating that this is not a complex case, notwithstanding the fact that your discovery requests have so far resulted on our client producing 25,000 pages of documents. Priority is not an issue, as our client has an incontestable registration and has been selling an FDA approved antimicrobial chlorhexidine product for use in surgery under the trademark Chloraprep® since 1994. Additionally, our client filed two applications for Chlorashield, on June 1, 2010 for related surgical goods, which were registered in February and March 2014, respectively. Thus, the only issue in this case is whether any or all of your client’s four (4) Intent to Use trademark applications for “Chlora___” for antimicrobial surgical goods containing chlorhexidine filed in December 2011 are likely to cause confusion with our client’s prior registrations and common law use under the thirteen *Du Pont* factors.

The only additional factors in this case are that your client and ours were working together between 2008 and 2011 to possibly develop a surgical antimicrobial drape product. That relationship ended in 2011, and your client filed the four (4) opposed trademark applications in December 2011. To our knowledge, your client has never sold any such products or even received FDA approval to sell a product, which is relevant to the extent that your client may not legally have the ability to sell such products, which brings into play Entrotech’s bona fide intent.

It is difficult not to conclude that much of your latest discovery is not simply irrelevant, but is meant to be burdensome and harassing, requiring Opposer to produce and prepare a witness to testify on documents that have nothing to do with defending a Section 2(d) Opposition. For example, you spend the better part of a page in your letter claiming that my law partner, Joseph Dreitler, has waived the attorney-client privilege and that Entrotech reserves the right to subpoena him for deposition before the discovery cutoff. This alleged waiver resulted from the fact that this law firm filed a statement of use on behalf of Opposer. Such allegations and tactics are simply harassing. You and your firm certainly know the law and that the Trademark Rule of Procedure § 2.193 clearly sets out the three types of persons who may sign documents with a verification of facts. The rule clearly distinguishes between an attorney who has an implied power of attorney from the owner and person with first-hand knowledge of facts. Mr. Dreitler is not a fact witness and your treat to subpoena him can only be construed as harassment.

With respect to your specific objections, you take issue with our objections to certain topics in the 30(b)(6) notice and to certain document requests that are based on relevance. You repeatedly cite TBMP §402.01 – “A party may take discovery not only as to matters specifically raised in the pleadings, but also as to any matter which might serve as the basis



for an additional claim, defense, or counterclaim.” – and you state the requested discovery is relevant to *inter alia*, “the validity of Opposer’s Chlorashield registrations.” See, e.g., Topics 7, 40, 38, and Requests for Production Nos. 76, 77, 82, 83, 84, 90.

Under TBMP §313.04, counterclaims to cancel a pleaded registration are compulsory counterclaims and must be brought “as part of defendant’s answer or promptly after the grounds therefor are learned.” *Jack Rajca v. New Yorker S.H.K. Jeans GMBH & Co. KG*, Cancellation No. 92056995 (TTAB July 22, 2014), citing *Turbo Sportswear Inc. v. Marmat Mountain Ltd.*, 77 USPQ2d 1152, 1154 (TTAB 2005). In this case, Registration No. 4488745 –CHLORASHIELD – registered February 25, 2014 for antimicrobial catheter patch dressing and Registration No. 4495083 – CHLORASHIELD – registered March 11, 2014 for surgical incise drape. You consented to our amending our Notice of Opposition to assert these two additional registrations, and Opposer’s Amended Notice of Opposition was filed on April 14, 2014. Applicant did not file its answer to the Amended Notice of Opposition until October 27, 2014. The Answer to the Amended Notice contained no affirmative defenses or counterclaims, even though you had served the discovery at issue herein on September 17, 2014.

Indeed, Applicant’s failure to assert any affirmative defenses or counterclaims, or conduct any discovery on the validity of the Chlorashield marks, goes back to the beginning of the case. The applications for CHLORASHIELD, Serial Nos. 85051474 and 85051477 were published for opposition on October 26, 2010. Your client did not oppose them. The applications were relied upon by Opposer in its original Notice of Opposition, filed on July 24, 2102. Applicant did not assert any affirmative defenses or counterclaims in its Answer of September 4, 2012. Statements of Use were submitted to the PTO on December 11, 2013 for Serial No. 85051474 and on December 12, 2013 for Serial No. 85051477. The specimens submitted with the SOUs were available along with the complete file histories for these applications. Clearly, Applicant had all the facts that it needed to file a motion for cancellation at the time Opposer filed its Amended Notice of Opposition. Your belated, and extensive, discovery on this issue is unquestionably prejudicial to Opposer and Opposer maintains its objections to providing the requested discovery.

You also assert that the information sought with respect to Topic Nos. 4, 7, 40, 20, 21, 22, 39, and 38 and Requests for Production Nos. 76, 77, 83, 84, 87, 98, 82, 75, and 90, is relevant because it goes to evidence of Opposer’s purported “bad faith.” Opposer’s “bad faith” is of no relevance to this trademark opposition proceeding. It does not go to any claim, defense or counterclaim. Rather, accusations of bad faith on the part of Opposer are more properly considered equitable defenses which are not considered by the Board. Any other accusations regarding Opposer’s bad faith could only be raised in a lawsuit under Section 43(a) for unfair competition. The TTAB does not have jurisdiction over issues relating to unfair competition. *Paramount Pictures Corp. v. White*, 41 USPQ2d 1768, 1771 n,5 (TTAB 1994). Discovery regarding Opposer’s purported bad faith in adopting the Chlorashield mark is especially frivolous, inasmuch as bad faith is simply not an affirmative defense that can be raised by the junior user of a mark. Opposer maintains its objections to providing the requested discovery.



Your request that Opposer provide discovery as to its use of the slogan The Chloraprep Advantage (Request for Production Nos. 87 and 98) is clearly improper. Opposer has not sought to register this slogan. The only possible use for this information would be to file a civil lawsuit for unfair competition. As noted above, such claims are not within the jurisdiction of the Board. Opposer maintains its objections to providing the requested discovery.

With respect to Applicant's discovery requests regarding Opposer's FDA filings for its Chlorashield products and documentation of IRB approvals (Requests for Production Nos. 75 and 90), we are producing herewith the 510(k) Premarket Notifications for K103106 and K133764. That is the only information that is relevant to this proceeding. The Chlorashield product has been approved for sale by the FDA. The requested information regarding the substance of such filings could only go to a collateral attack on the processes of the involved agencies – certainly not an area over which the Board has jurisdiction. Furthermore, while the Board did indeed compel Applicant to produce this information to Opposer, on the grounds that “the requested documents are directly relevant to the issue of whether applicant had a demonstrated capacity to produce the medical products set forth in its applications under its subject marks as of the time the involved applications were filed or has taken steps necessary to develop and market such products since the filing date of the applications,” these are not issues that are equally applicable to Opposer. With the exception of producing the attached 510(k) Premarket Notifications, Opposer maintains its objections to providing any addition discovery on this topic.

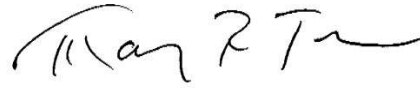
Likewise, discovery relating to Opposer's collaborations with third parties regarding the development of the Chlorashield products (Request for Production Nos. 87, 77, 83, and 84) and for information on patent filings for Chloraprep and Chlorashield products (Request for Production No. 82), or for information on internal CareFusion projects with which Applicant is no longer involved (Request for Production No. 1) are completely irrelevant to any issue properly before this Board. Such information would only be relevant to an action for unfair competition, or a patent related claim. These are not issues within the Board's jurisdiction and Opposer maintains its objections to providing the requested discovery.

Finally, as Opposer's 30(b)(6) designee, Mr. Creidenberg has the responsibility of testifying on behalf of the company. As you note, it is appropriate for him to testify to matters as to which he does not have personal knowledge, so long as he has the ability to bind the company. Accordingly, your continued insistence that Opposer confirm that Mr. Creidenberg is the “individual most knowledgeable about this topic” is improper and is not the role of a 30(b)(6) designee.



I look forward to discussing these issues with you on Monday.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary R. True". The signature is fluid and cursive, with the first name "Mary" being the most prominent part.

Mary R. True



APPENDIX 5

Elizabeth Brenckman

From: Erin Hickey
Sent: Wednesday, November 19, 2014 7:21 PM
To: Mary True (mtrue@ustrademarklawyer.com)
Cc: Elizabeth Brenckman
Subject: CF v. ELS - Summary of Monday's Meet & Confer

Hi Mary,

We would like to summarize Monday afternoon's meet and confer, to be sure that we correctly understood your client's position about each of the discovery issues we raised in our letter to you dated November 12, 2014 and your letter to us responding to those issues dated November 17, 2014.

Based on our conversation, we understand the following:

30(b)(6) Topics for Examination:

- Mr. Creidenberg will be prepared to testify on behalf of Opposer about Topic Nos. 1-3, 5-6, 8-12, 14-19, 23-25, 27, 29-37, and any instruction you give for him not to answer will be based on attorney-client privilege only.
- Regarding Topic Nos. 1 and 2, we understand that Mr. Creidenberg will be prepared to testify about Opposer's corporate structure, including other divisions that may play or have played a role in Opposer's products covered by Opposer's marks, such as CareFusion 213 LLC, Opposer's business, and its history, as well as Opposer's takeover by Becton, Dickinson and Company ("BD"), generally, the significance of Opposer's products covered by Opposer's marks to BD and the takeover, and BD's plans regarding Opposer's products covered by Opposer's marks, to the extent Opposer is aware of this information, and any instruction you give him not to answer will be based on attorney-client privilege only. We also understand that you inadvertently failed to include "the CHLORASHIELD line of products" in Footnote 2 of your letter dated November 17, 2014 letter, in which you clarify that "Mr. Creidenberg's knowledge to speak on behalf of Opposer is limited to the portions of the company that are currently responsible for the Chloraprep line of products . . .". In other words, Mr. Creidenberg will be prepared to testify about Opposer's CHLORAPREP and CHLORASHIELD line of products, from both a current and historical perspective.
- You mistakenly included Topic No. 4 in the first paragraph of your letter dated November 17, 2014, in which you confirmed that Mr. Creidenberg would be prepared to testify regarding that topic. Instead, your position now is that Mr. Creidenberg will *not* testify about that topic, and your basis for refusing to permit him to testify is relevance. Based on the same objection (relevance), you also refuse to permit Mr. Creidenberg to testify about Topic Nos. 7, 13, 20-22, 38, and 40.
- Regarding Topic No. 39, you refuse to permit Mr. Creidenberg to testify about Opposer's patent filings based on relevance, but you will permit him to testify (and prepare him accordingly) about the trademark filings Opposer made in connection with its two registrations for its CHLORAPREP mark and its two registrations for its CHLORASHIELD mark, including, by way of example, the prosecution histories, and, with particular relevance to the CHLORASHIELD registrations, the Statements of Use, the factual bases for use of the mark in connection with the products they cover, and the bases for Opposer's good-faith intent to use the mark in United States commerce at the time of filing the applications. We also understand that, with respect to these trademark filings, your position is that, even though Mr. Dreitler executed the declarations in connection with the intent-to-use applications and Statements of Use on behalf of Opposer, the facts underlying these filings and declarations, and any statements, whether made in documents (print or electronic) or in conversation, between your firm and Opposer about the facts underlying these filings and declarations, are somehow protected by the attorney-client privilege, and that you will instruct Mr. Creidenberg not to answer any questions about those

issues on the basis of attorney-client privilege. You agreed to send us case law that you have supporting your position, and we ask that you do so by the close of business tomorrow, Thursday, November 20, 2014.

- Regarding Topic No. 28, you will permit Mr. Creidenberg to testify only about the “caption and the outcome” of any prior or current disputes, and your basis for refusing to permit Mr. Creidenberg to otherwise testify about this topic is relevance. You agreed to send us case law that you have that allegedly supports your position. We ask that you do so by close of business tomorrow, Thursday, November 20, 2014.

Applicant’s Second Set of Requests for Production:

- Opposer is refusing to produce documents responsive to Request Nos. 75, 76, 77, 82, 83, 84, 87, 90, and 98. Your basis for these refusals is relevance. Opposer is also refusing to produce any documents responsive to Request No. 67, other than documents it already had produced, which are limited to only the aspects of those two projects with which Applicant was involved.
- Opposer is producing, or already has produced, documents responsive to Request No. 86.
- Opposer is refusing to produce documents responsive to Request Nos. 95 and 96, on the basis that the information sought is publicly available, even though some of these documents could be e-mails or correspondence of Opposer, which would not be publicly available.
- Opposer is refusing to produce additional documents about Opposer’s alleged *bona fide* intent to use, and use sufficient to support its Statements of Use, in connection with its two registrations of its CHLORASHIELD mark, in Request Nos. 78-80 on the basis of attorney-client privilege. Again, your position is that, even though Mr. Dreitler executed the declarations in connection with the intent-to-use applications and Statements of Use on behalf of Opposer, the facts underlying these filings and declarations, and any statements, whether made in documents (print or electronic) or in conversation, between your firm and Opposer about the facts underlying these filings and declarations, are somehow protected by the attorney-client privilege, and that you will instruct Mr. Creidenberg not to answer any questions about those issues on the basis of attorney-client privilege. And again, you agreed to send us case law that you have supporting your position, and we ask that you do so by the close of business tomorrow, Thursday, November 20, 2014.

Please let us know immediately if we misunderstood any of these points.

Thanks,
Erin



Erin M. Hickey | Principal
12390 El Camino Real
San Diego, CA 92130
Direct Dial: 858-678-4327
Fax: 858-678-5099

APPENDIX 6

April R. Morris

From: Erin Hickey
Sent: Friday, November 21, 2014 1:16 PM
To: Entrotech/CareFusion F&R Internal
Subject: FW: CF v. ELS - Summary of Monday's Meet & Confer

From: Mary True [mailto:mtrue@ustrademarklawyer.com]
Sent: Friday, November 21, 2014 12:24 PM
To: Erin Hickey
Cc: Elizabeth Brenckman
Subject: RE: CF v. ELS - Summary of Monday's Meet & Confer

Erin – please see my comments below in red.

From: Erin Hickey [mailto:Hickey@fr.com]
Sent: Wednesday, November 19, 2014 7:21 PM
To: Mary True (mtrue@ustrademarklawyer.com)
Cc: Elizabeth Brenckman
Subject: CF v. ELS - Summary of Monday's Meet & Confer

Hi Mary,

We would like to summarize Monday afternoon's meet and confer, to be sure that we correctly understood your client's position about each of the discovery issues we raised in our letter to you dated November 12, 2014 and your letter to us responding to those issues dated November 17, 2014.

Based on our conversation, we understand the following:

30(b)(6) Topics for Examination:

- Mr. Creidenberg will be prepared to testify on behalf of Opposer about Topic Nos. 1-3, 5-6, 8-12, 14-19, 23-25, 27, 29-37, and any instruction you give for him not to answer will be based on attorney-client privilege only.
- Regarding Topic Nos. 1 and 2, we understand that Mr. Creidenberg will be prepared to testify about Opposer's corporate structure, including other divisions that may play or have played a role in Opposer's products covered by Opposer's marks, such as CareFusion 213 LLC, Opposer's business, and its history, as well as Opposer's takeover by Becton, Dickinson and Company ("BD"), generally, the significance of Opposer's products covered by Opposer's marks to BD and the takeover, and BD's plans regarding Opposer's products covered by Opposer's marks, to the extent Opposer is aware of this information, and any instruction you give him not to answer will be based on attorney-client privilege only. **You misunderstood. Mr. Creidenberg will not testify about the \$12.2 Billion takeover of CareFusion Corporation by Becton Dickinson that was publicly announced in October 2014 but has not yet occurred. Your continuing to ask that CFN employees testify in a trademark Opposition before the TTAB regarding this takeover is nothing short of harassing and burdensome. Even if CareFusion could have a person speak on behalf of the Company about this subject prior to the Closing without violating the Securities laws and various non disclosure agreements between it and Becton Dickinson, any such discussions would be simply to harass or embarrass CareFusion and has nothing to do with whether or not**

your client's 4 unused trademark applications are likely to cause confusion with CareFusion's "Chlora" marks and products. If your goal is to delay this Opposition by demanding to ask questions about CareFusion's being acquired and forcing CareFusion to ultimately filing a motion in a District Court to quash it, so be it. Your continued pressing to obtain Discovery about our client's being acquired is simply harassment and sadly, suggests an ulterior motive that you and your client would do with such information, none of which is relevant to the issues in this Opposition. We also understand that you inadvertently failed to include "the CHLORASHIELD line of products" in Footnote 2 of your letter dated November 17, 2014 letter, in which you clarify that "Mr. Creidenberg's knowledge to speak on behalf of Opposer is limited to the portions of the company that are currently responsible for the Chloraprep line of products . . . ". In other words, Mr. Creidenberg will be prepared to testify about Opposer's CHLORAPREP and CHLORASHIELD line of products, from both a current and historical perspective.

- You mistakenly included Topic No. 4 in the first paragraph of your letter dated November 17, 2014, in which you confirmed that Mr. Creidenberg would be prepared to testify regarding that topic. Instead, your position now is that Mr. Creidenberg will *not* testify about that topic, and your basis for refusing to permit him to testify is relevance. Based on the same objection (relevance), you also refuse to permit Mr. Creidenberg to testify about Topic Nos. 7, 13, 20-22, 38, and 40. **I maintain my objection that these topics are not relevant to this trademark opposition, that your insistence on seeking discovery in these areas constitutes harassment, and that the Company should not be forced to testify on these matters. However, to the extent Mr. Creidenberg has personal knowledge, he will testify as to that knowledge.**
- Regarding Topic No. 39, you refuse to permit Mr. Creidenberg to testify about Opposer's patent filings based on relevance, **and the fact that your requests are nothing more than blatant and obvious harassment. The issues to be decided by the Board in this trademark opposition are priority and likelihood of confusion. If your client has some desire and standing to challenge any of CareFusion's patents, then it should pursue that in the appropriate forum.** but you will permit him to testify (and prepare him accordingly) about the trademark filings Opposer made in connection with its two registrations for its CHLORAPREP mark and its two registrations for its CHLORASHIELD mark, including, by way of example, the prosecution histories, and, with particular relevance to the CHLORASHIELD registrations, the Statements of Use, the factual bases for use of the mark in connection with the products they cover, and the bases for Opposer's good-faith intent to use the mark in United States commerce at the time of filing the applications. We also understand that, with respect to these trademark filings, your position is that, even though Mr. Dreitler executed the declarations in connection with the intent-to-use applications and Statements of Use on behalf of Opposer, the facts underlying these filings and declarations, and any statements, whether made in documents (print or electronic) or in conversation, between your firm and Opposer about the facts underlying these filings and declarations, are somehow protected by the attorney-client privilege, and that you will instruct Mr. Creidenberg not to answer any questions about those issues on the basis of attorney-client privilege. You agreed to send us case law that you have supporting your position, and we ask that you do so by the close of business tomorrow, Thursday, November 20, 2014.

The basis for our position is based on the statute, not case law. Again, this is nothing more than blatant harassment on your part. You and your firm claim to be trademark lawyers and the Trademark Rules 37 CFR 2.193 sets forth the three categories of persons who may sign, among other documents to be filed in the USPTO, statements of use:

(1) Verification of facts. A verification in support of an application for registration, amendment to an application for registration, allegation of use under § 2.76 or § 2.88, request for extension of time to file a statement of use under § 2.89, or an affidavit under section 8, 12(c), 15, or 71 of the Trademark Act must be sworn to or supported by a declaration under § 2.20, signed by the owner or a person properly authorized to sign on behalf of the owner. A person who is properly authorized to verify facts on behalf of an owner is:

(i) A person with legal authority to bind the owner (e.g., a corporate officer or general partner

of a partnership);

(ii) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or

(iii) An attorney as defined in § 11.1 of this chapter who has an actual written or verbal power of attorney or an implied power of attorney from the owner.

Given that you are a trademark lawyer, you know that there is a difference in the rules between “a person with knowledge of the facts” as set out in sub-section ii and an attorney who is not required to have firsthand knowledge of the facts in section iii. These rules were subject to public comment and adopted in 1999 as part of the Trademark Law Implementation Law Treaty. The fact that there is no published case law in 15 years simply confirms that practitioners have recognized that an attorney signing in that capacity is not signing with firsthand knowledge of the facts.

Again, if your goal is to delay this case by harassing opposing counsel with threats to seek a waiver of attorney-client privilege and depose them by arguing such a frivolous position that an attorney whose name is electronically signed not as a fact witness but simply as an attorney under sub section iii in front of a federal judge, then so be it.

- Regarding Topic No. 28, you will permit Mr. Creidenberg to testify only about the “caption and the outcome” of any prior or current disputes, and your basis for refusing to permit Mr. Creidenberg to otherwise testify about this topic is relevance **and because the request is overly burdensome**. You agreed to send us case law that you have that allegedly supports your position. We ask that you do so by close of business tomorrow, Thursday, November 20, 2014. **In J&J v. Rexall Drug, 186 USPQ 201 (TTAB 1975), The Board stated “Thus applicant’s interrogatories requesting identification of legal proceedings or written or oral agreements between oppose and third parties based on opposer’s ownership of its pleaded mark . . are not objectionable, except that opposer need merely identify the legal proceedings by naming the parties involved, listing the jurisdiction and proceeding number, and stating the outcome; that is, opposer need not . . identify all documents pertaining to such litigation, such request being too broad and burdensome. Moreover, in line with the aforesaid ruling, oppose need not provide discovery concerning trademark uses of, or the filing of applications to register by, third parties with whom oppose has no direct contact.**

Applicant’s Second Set of Requests for Production:

- Opposer is refusing to produce documents responsive to Request Nos. 75, 76, 77, 82, 83, 84, 87, 90, and 98. Your basis for these refusals is relevance. Opposer is also refusing to produce any documents responsive to Request No. 67, other than documents it already had produced, which are limited to only the aspects of those two projects with which Applicant was involved.

We have provided documents responsive to Request No. 75. See above (re Topic 39) with respect to our objections to Request No. 82. With respect to Request Nos. 87 and 98, and without waiving any other objections, Opposer states that it has no responsive documents. Also, see above (re Topic 4) with respect to our objections to Request Nos. 76, 77, 83 and 84.

- Opposer is producing, or already has produced, documents responsive to Request No. 86.
- Opposer is refusing to produce documents responsive to Request Nos. 95 and 96, on the basis that the information sought is publicly available, even though some of these documents could be e-mails or correspondence of Opposer, which would not be publicly available.

All such documents related to third party usage of which Opposer has had contact with have been produced.

- Opposer is refusing to produce additional documents about Opposer's alleged *bona fide* intent to use, and use sufficient to support its Statements of Use, in connection with its two registrations of its CHLORASHIELD mark, in Request Nos. 78-80 on the basis of attorney-client privilege. Again, your position is that, even though Mr. Dreitler executed the declarations in connection with the intent-to-use applications and Statements of Use on behalf of Opposer, the facts underlying these filings and declarations, and any statements, whether made in documents (print or electronic) or in conversation, between your firm and Opposer about the facts underlying these filings and declarations, are somehow protected by the attorney-client privilege, and that you will instruct Mr. Creidenberg not to answer any questions about those issues on the basis of attorney-client privilege. And again, you agreed to send us case law that you have supporting your position, and we ask that you do so by the close of business tomorrow, Thursday, November 20, 2014. **See above.**

Please let us know immediately if we misunderstood any of these points.

Thanks,
Erin



Erin M. Hickey | Principal
12390 El Camino Real
San Diego, CA 92130
Direct Dial: 858-678-4327
Fax: 858-678-5099

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

Exhibit D



- OUR SOLUTIONS
- OUR PRODUCTS
- CUSTOMER SUPPORT
- SAFETY & CLINICAL EXCELLENCE
- INVESTORS
- OUR COMPANY

Home > Newsroom >

Overview

- News Releases
- Leadership
- Media Library
- Ethics and Compliance
- Events
- Global Citizenship

<< [Back to News Releases]

Vancive Medical Technologies™, Carefusion Sign Agreement For Antimicrobial Dressing

Exclusive agreement in North America marks first line of vascular access dressings from CareFusion

Nov 19, 2013

CHICAGO – November 19, 2013 – Vancive Medical Technologies™ and CareFusion Corporation (NYSE: CFN) today announced an exclusive agreement in the United States, Canada and Mexico for the licensing and distribution of Vancive's BeneHold™ Chlorhexidine Gluconate (CHG) antimicrobial Adhesive Technology for applications in vascular access.

Under the agreement, CareFusion will market Vancive's unique antimicrobial adhesive technology used with transparent dressings that are ideally suited for protection of catheter insertion sites. The first product received 510(k) clearance from the U.S. Food and Drug Administration (FDA) in September 2012 and will be co-branded under CareFusion's new ChloroShield™ brand.

"We are excited about this collaboration, and believe it is an excellent opportunity to combine the unique capabilities of each company," said Howard Kelly, president and general manager of Vancive Medical Technologies. "By bringing together the considerable infection prevention expertise at CareFusion and Vancive's cutting-edge technologies, we will provide innovative solutions to the vascular access market."

CareFusion and Vancive are working together to develop a comprehensive line of dressing products that incorporate the BeneHold™ CHG antimicrobial Adhesive Technology to meet the specific needs associated with many types of vascular access procedures. CareFusion expects to commercialize these offerings during the company's fiscal third quarter, which begins in April.

"The collaboration with Vancive Medical Technologies and the new ChloroShield™ line of dressings are a perfect fit with our leadership in CHG products," said Jim Leidl, senior vice president and general manager of Medical Specialties at CareFusion. "These innovative vascular access dressings extend our clinically differentiated infection prevention and vascular access product portfolios, allowing us to create greater value for our customers."

BeneHold is a trademark of Avery Dennison Corporation. ChloroShield is a trademark of CareFusion Corporation.

About Vancive Medical Technologies

Vancive Medical Technologies makes inspired advances that lead to intelligent results. The business uses the most advanced

About Vancive Medical Technologies

Vancive Medical Technologies makes inspired advances that lead to intelligent results. The business uses the most advanced adhesive and material technologies to create products that make healthcare easier for everyone. Vancive Medical Technologies is an Avery Dennison business headquartered in Chicago, Illinois. To learn more about Vancive Medical Technologies, visit www.vancive.averydennison.com.

About Avery Dennison

Avery Dennison (NYSE:AVY) is a global leader in labeling and packaging materials and solutions. The company's applications and technologies are an integral part of products used in every major market and industry. With operations in more than 50 countries and 30,000 employees worldwide, Avery Dennison serves customers with insights and innovations that help make brands more inspiring and the world more intelligent. Headquartered in Pasadena, California, the company reported sales from continuing operations of \$6 billion in 2012. Learn more at www.averydennison.com.

About CareFusion

CareFusion (NYSE: CFN) is a global corporation serving the health care industry with products and services that help hospitals measurably improve the safety and quality of care. The company develops industry-leading technologies including **Alaris®** infusion pumps, **Pyxis®** automated dispensing and **patient identification systems**, **AVEA®**, **AirLife®** and **LTV® series** ventilation and respiratory products, **ChloraPrep®** products, **MedMined®** services for data mining surveillance, **V. Mueller®** surgical instruments, and an extensive line of **products that support interventional medicine**. CareFusion employs approximately 15,000 people across its global operations. More information may be found at www.carefusion.com.

###

For further information: Vancive Media Contact: Bob Giuliano, (610) 328-1051 , Bob.Giuliano@prplace.biz, or Vancive Marketing Communications Contact: Suzanne Kelly, (312) 629-4607 , Suzanne.kelly@averydennison.com, or CareFusion Media Contact: Troy Kirkpatrick, (858) 617-2361 , troy.kirkpatrick@carefusion.com or CareFusion Investor Contact: Jim Mazzola, (858) 617-1203 , jim.mazzola@carefusion.com

[More...](#)

RSS Print



Exhibit E

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF Trademark Application Serial Nos. 85/499349; 85/499345;
85/499337 and 85/499332**

DATE OF PUBLICATION: May 29, 2012

Carefusion 2200, Inc.,

Opposer,

**Combined Opposition No: 91-
206,212**

v.

Entrotech, Inc.

Applicant

**OPPOSER'S REPSONSES AND OBJECTIONS TO
APPLICANT'S 30(B)(6) NOTICE**

1. Opposer's business and its history, including Opposer's predecessors in interest.

RESPONSE: Opposer objects to this topic as currently drafted because it is overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg to address this topic on behalf of the CareFusion business unit responsible for the products sold by Opposer under Opposer's Marks.

2. Opposer's corporate structure.

RESPONSE: Opposer objects to this topic as currently drafted as overly broad and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg to generally address topics regarding Opposer's corporate structure of which he has knowledge.

3. Opposer's relationship, collaboration, business, and/or partnership with Applicant, Entrofoor Medical, LLC, John S. Foor, M.D., and/or Jim McGuire.

RESPONSE: Opposer identifies Jan Creidenberg.

4. Opposer's relationship, collaboration, business, and/or partnership with

Avery Dennison Corporation, including, but not limited to, its business under the trade name Vancive Medical Technologies, with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks and any other products Opposer offers, sells, or intends to sell with chlorhexidine.

RESPONSE: Opposer objects to this topic as not reasonably calculated to lead to the discovery of evidence that is relevant to the issues raised in this Opposition.

5. Opposer's Goods offered and/or sold under Opposer's Marks.

RESPONSE: Opposer identifies Jan Creidenberg.

6. The advertising, marketing and/or promotion of Opposer's Goods under Opposer's Marks.

RESPONSE: Opposer identifies Jan Creidenberg.

7. The research, testing, development, manufacture, production, distribution, marketing, advertising, and/or sale of Opposer's Goods under Opposer's Marks, including, but not limited to, any and all pilot studies and/or clinical trials and any and all approvals by an Institutional Review Board, by Opposer, Avery Dennison Corporation, or any other company, organization, entity, or person.

RESPONSE: Opposer objects to this topic as currently drafted as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

8. Total annual profits and revenues derived from Opposer's Goods sold under or in connection with Opposer's Marks. (For Opposer's CHLORAPREP Goods, for each year from 2004 to the present. For Opposer's CHLORASHIELD

Goods, for each year from the date of first sale to the present.)

RESPONSE: Opposer identifies Jan Creidenberg.

9. Total annual expenditures for advertising, marketing, and/or promotion for Opposer's Goods under Opposer's Marks. (For Opposer's CHLORAPREP Goods, for each year from 2004 to the present. For Opposer's CHLORASHIELD Goods, for each year from the date of first advertising, marketing, and/or promoting to the present.)

RESPONSE: Opposer identifies Jan Creidenberg.

10. The volume of sales of Opposer's Goods under Opposer's Marks.

RESPONSE: Opposer identifies Jan Creidenberg.

11. Articles, whether published or unpublished, solicited or unsolicited, press releases, accolades, awards, or other press coverage concerning Opposer's Goods offered and/or sold in connection with Opposer's Marks.

RESPONSE: Opposer identifies Jan Creidenberg.

12. Consumer attitudes or perceptions of Opposer and/or Opposer's Goods offered and/or sold in connection with Opposer's Marks.

RESPONSE: Opposer objects to this topic as currently drafted as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg as a person who may have personal knowledge as to this topic.

13. The satisfaction, dissatisfaction, and/or complaints from consumers or the trade with respect to Opposer's Goods offered and/or sold in connection with Opposer's Marks.

RESPONSE: Opposer objects to this topic as currently drafted as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition.

14. Any business plan, marketing plan, or strategic plan regarding Opposer's Goods offered and/or sold in connection with Opposer's Marks, including, but not limited to, Opposer's plan or intent to expand or increase the types of goods Opposer offers for sale under Opposer's Marks.

RESPONSE: Opposer objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg .

15. The purchasers or consumers of Opposer's Goods offered and/or sold in connection with Opposer's Marks, including, but not limited to, Opposer's method of identifying and soliciting business from such purchasers or consumers and any marketing plans or proposals relating to same.

RESPONSE: Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg.

16. The channels of advertising in which Opposer markets, promotes, and advertises, and the channels of trade in which Opposer sells Opposer's Goods offered and/or sold in connection with Opposer's Marks.

RESPONSE: Opposer identifies Jan Creidenberg.

17. The price of Opposer's Goods offered and/or sold under Opposer's Marks.

RESPONSE: Opposer identifies Jan Creidenberg.

18. The degree of care likely to be exercised by consumers who purchase

Opposer's Goods offered and/or sold in connection with Opposer's Marks.

RESPONSE: Opposer identifies Jan Creidenberg.

19. The conception, development, consideration, design, selection, adoption, and first use of Opposer's Marks, including discussions with advertising, marketing, and/or branding agencies.

RESPONSE: Opposer identifies Jan Creidenberg as a person who may have some historical knowledge regarding this topic.

20. The conception, development, consideration, design, selection, adoption, and first use of the slogan THE CHLORAPREP ADVANTAGE in connection with Opposer's products.

RESPONSE: Opposer objects to this topic as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition.

21. When Opposer first became aware of Applicant's use and/or application to register its slogan THE CHLORHEXIDINE ADVANTAGE, which is the subject of United States Application Serial Nos. 85/661,172 and 85/661,170.

RESPONSE: Opposer objects to this topic as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition.

22. Alternatives considered when selecting Opposer's Marks, as well as the slogan THE CHLORAPREP ADVANTAGE, and the reasons for adopting Opposer's Marks over such alternatives.

RESPONSE: Opposer objects to this topic as currently drafted as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that

is relevant to the issues raised in this Opposition.

23. Searches or investigations relating to a name or trademark incorporating the term “CHLOR” or “CHLORA,” including, but not limited to, trademark or clearance searches.

RESPONSE: Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg.

24. Opposer’s awareness of third-party uses of names or trademarks incorporating the term “CHLOR” or “CHLORA.”

RESPONSE: Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege. Opposer identifies Jan Creidenberg.

25. Opposer’s current and intended platform of brands incorporating the prefix “CHLOR” or “CHLORA.”

RESPONSE: Objection. Opposer states that it does not have a platform of brands containing the prefix “CHLOR”. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg.

26. The descriptive nature of Opposer’s Marks and, if applicable, any of Opposer’s other trademarks incorporating the prefix “CHLOR” or “CHLORA.”

RESPONSE: Opposer objects to this topic as currently drafted because it is unclear, and appears to be seeking testimony that is legal in nature. Opposer further states that it does not have a platform of brands containing the prefix “CHLOR”

27. Opposer’s policing and enforcement activities involving Opposer’s Marks.

RESPONSE: Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg.

28. Prior or current disputes, including, but not limited to, litigation, arbitration, mediation, threats to use, and U.S. Patent and Trademark Office proceedings that relate, in any way, to Opposer's Marks, including, but not limited to, *Medi-Flex, Inc. v. Nice-Pak Prods., Inc.*, 422 F. Supp.2d 1242 (D. Kansas 2006).

RESPONSE: Opposer objects to this topic as currently drafted as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition.

29. Any objection of any kind that any third party has made relating to Opposer's use of Opposer's Marks.

RESPONSE: Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg as a person who may have personal knowledge on this issue.

30. Agreements involving Opposer's Marks, including, but not limited to, all co- development or co-branding agreements, licenses, settlement agreements, and co-existence agreements.

RESPONSE: Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg.

31. Likely or possible confusion between Opposer's Marks and Applicant's Marks.

RESPONSE: Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg as a person who may have personal knowledge on this issue.

32. Instances involving persons inquiring or commenting about any relationship between Opposer and Applicant.

RESPONSE: Opposer identifies Jan Creidenberg.

33. Opposer's awareness of Applicant and Applicant's Marks.

RESPONSE: Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg as a person who may have personal knowledge on this issue.

34. Opposer's alleged loss of business that will result from Applicant's Marks.

RESPONSE: Opposer identifies Jan Creidenberg.

35. Opposer's competitors.

RESPONSE: Opposer identifies Jan Creidenberg.

36. Opposer's responses to Applicant's First and Second Set of Interrogatories.

RESPONSE: Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg as a person who may have personal knowledge on this issue.

37. Opposer's documents produced in response to Applicant's First and Second Set of Requests for Production of Documents and Things.

RESPONSE: Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg as a person who may have personal knowledge on this issue.

38. Filings with the Food and Drug Administration (the "FDA") with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.

RESPONSE: Opposer objects to this topic as currently drafted as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other

competitively sensitive information.

39. Filings, both trademark and patent, with respect to Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.

RESPONSE: Opposer objects to this topic as currently drafted as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Opposer objects to this topic to the extent it is seeking information that is subject to the attorney-client privilege.

40. All companies, organizations, entities, or people that Opposer communicated with, solicited, encouraged, or engaged in any discussions or negotiations about researching, testing, developing, manufacturing, producing, distributing, marketing, advertising, and/or selling Opposer's Goods offered and/or sold in connection with Opposer's CHLORASHIELD Marks.

RESPONSE: Opposer objects to this topic as currently drafted as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, or to evidence that is relevant to the issues raised in this Opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Dated: October 16, 2014.

Respectfully Submitted,

DREITLER TRUE LLC

/Mary R. True/
Joseph R. Dreitler
Mary R. True
19 E. Kossuth St.
Columbus, OH 43206
Telephone: 614-449-6767
E-mail: jdreitler@ustrademarklawyer.com
E-mail: mtrue@ustrademarklawyer.com

*Attorneys for Opposer
CareFusion 2200, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2014, a true and correct copy of the foregoing was served via electronic mail upon Erin Hickey at hickey@fr.com.

/s/ Mary R. True
Mary R. True

Exhibit F

**IN THE UNITED STATES PATENT AND TRADEMARK
OFFICE BEFORE THE TRADEMARK TRIAL AND
APPEAL BOARD**

In the matter of application Serial Nos.:

Ser. No. 85/499,349 for the mark
CHLORADERM Ser. No. 85/499,345 for
the mark **CHLORABSORB** Ser. No.
85/499,337 for the mark **CHLORABOND**
Ser. No. 85/499,332 for the mark
CHLORADRAPE

Filed on December 19, 2011

Published in the *Official Gazette* on May 29, 2012 Combined Opposition No.: 91-206,212

CAREFUSION 2200, INC.,

Opposer, v.

ENTROTECH LIFE SCIENCES, INC.,

Applicant.

**OPPOSER’S WRITTEN RESPONSES TO
APPLICANT’S SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Under Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer CareFusion 2200, Inc. (“Opposer”) makes the following written responses and objections to Applicant Entrotech Life Sciences, Inc.’s (“Applicant”) Second Set of Requests for Production of Documents.

**REQUESTS FOR PRODUCTION OF DOCUMENTS AND
THINGS**

Request No. 67. All Documents and Things referencing or concerning the “LINUS” and/or “BLACKBEARD” projects with which Opposer was involved.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request to the extent it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, Opposer states that responsive documents relating to the limited aspects of the LINUS and/or BLACKBEARD projects in which Applicant participated have been produced.

Request No. 68. All Documents and Things constituting, referencing, or concerning Opposer’s communications with Applicant, Entrofoor Medical, LLC (“Entrofoor”), John S. Foor, M.D. (“Dr. Foor”), and/or Jim McGuire (“Mr. McGuire”) from 2007 through 2011 with respect to developing medical products with chlorhexidine.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request to the extent it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, including in particular, objections as to relevance, Opposer states that all responsive and non-privileged documents have been produced.

Request No. 69. All Documents and Things constituting, referencing, or concerning Opposer’s internal communications from 2007 through 2011 with respect to collaborating and/or partnering with Applicant, Entrofoor, Dr. Foor, and/or Mr. McGuire with respect to developing medical products with chlorhexidine, including, but not limited, documents and things referencing or concerning Opposer’s interest in collaborating and/or partnering with Applicant, Entrofoor, Dr. Foor, Mr. McGuire.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request to the extent it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, including in particular objections as to relevance, Opposer states that all responsive and non-privileged documents have been produced.

Request No. 70. All Documents and Things sufficient to describe in-person, telephone, and web-based meetings between Opposer and Applicant, Entrofloor, Dr. Floor, and/or Mr. McGuire with respect to developing medical products with chlorhexidine, including all information and documents shared at such meetings from 2007 through 2011.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request to the extent it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, particularly those relating to relevance, Opposer states that all responsive and non-privileged documents have been produced.

Request No. 71. All Documents and Things Applicant, Entrofloor, Dr. Floor, and/or Mr. McGuire provided to Opposer with respect to possibly co-developing medical products with chlorhexidine, including, but not limited to, all research, testing, studies, and prototypes, for each year from 2007 through 2011, and any documents or things referencing or concerning them, including any communications or correspondence with a third party about them.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request to the extent it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any

objections, particularly those relating to relevance, Opposer states that all responsive and non-privileged documents have been produced.

Request No. 72. All Documents and Things referencing or concerning any concerns or issues Opposer had with respect to partnering and/or collaborating with Applicant, Entrofloor, Dr. Foor, and/or Mr. McGuire with respect to developing medical products with chlorhexidine for each year from 2007 through 2011.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request to the extent it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, particularly those relating to relevance, Opposer states that all responsive and non-privileged documents have been produced.

Request No. 73. All Documents and Things constituting, referencing, or concerning any agreements involving or negotiated with Applicant, Entrofloor, Dr. Foor, and/or Mr. McGuire, including confidentiality agreements, non-disclosure agreements, letters of intent, development agreements, and term sheets, whether in draft or final form, from 2007 through 2011.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request to the extent it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, particularly those relating to relevance, Opposer states that all responsive and non-privileged documents have been produced.

Request No. 74. All Documents and Things sufficient to describe the

relationship between Opposer and Applicant, Entrofloor, Dr. Floor, and/or Mr. McGuire regarding the chlorhexidine products, including the reasons why the collaboration ended from 2007 to 2011.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request to the extent it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, particularly those relating to relevance, Opposer states that all responsive and non-privileged documents have been produced.

Request No. 75. All Documents and Things Opposer, or any entity or person related to Opposer, filed with the Food and Drug Administration (the “FDA”) with respect to the products identified in Opposer’s United States Registration Nos. 4,495,083 and 4,488,745 for Opposer’s CHLORASHIELD mark, including, but not limited to, written submissions, requests for information, and responses to requests for information for each year from 2007 to the present.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence in this trademark opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Request No. 76. All Documents and Things referencing or concerning Opposer’s collaboration and/or partnership with Avery Dennison Corporation, including, but not limited to, its business under the trade name Vancive Medical Technologies, with respect to the products identified in Opposer’s United States Registration Nos. 44,495,083 and 4,488,745 for Opposer’s CHLORASHIELD mark from 2007 to the present, including, but not limited to, all agreements and

communications from 2007 to the present.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence in this trademark opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Request No. 77. All Documents and Things referencing or concerning any other company, organization, entity, or person, with which Opposer communicated, solicited, encouraged, or engaged in any discussions or negotiations about researching, testing, developing, manufacturing, producing, distributing, marketing, advertising, and/or selling the products identified in Opposer’s United States Registration Nos. 4,495,083 and 4,488,745 for Opposer’s CHLORASHIELD mark.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence in this trademark opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Request No. 78. All Documents and Things that support Opposer’s bases for alleging good faith, *bona fide* intent to use the CHLORASHIELD mark in United States commerce with respect to United States Registration Nos. 4,495,083 and 4,488,745 at the time Opposer applied to register the marks on June 1, 2010.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence in this trademark opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information, or information subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer states that responsive, non-privileged documents have been produced.

Request No. 79. All Documents and Things that support Opposer's basis for filing its Statement of Use for the CHLORASHIELD mark in United States commerce with respect to United States Registration No. 4,488,745 on December 11, 2013 and the basis Opposer's counsel of record had for signing the declaration in support of same.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence in this trademark opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information, or information subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer states that responsive, non-privileged documents are produced herewith.

Request No. 80. All Documents and Things that support Opposer's basis for filing its Statement of Use for the CHLORASHIELD mark in United States commerce with respect to United States Registration No. 4,495,083 on December 12, 2013 and the basis Opposer's counsel of record had for signing the declaration in support of same.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence in this trademark opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information, or information subject to the attorney-client privilege. Subject to and without waiving any objections, Opposer states that responsive, non-privileged documents are produced herewith.

Request No. 81. All Documents and Things constituting, referencing, or concerning all communications Opposer had internally about adopting the CHLORASHIELD mark for the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745, including, but not limited to, any

communications with Applicant, Entrofloor, Dr. Foor, and/or Mr. McGuire.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information. Subject to and without waiving any objections, Opposer has no documents responsive to this Request but reserves the right to supplement this response if responsive, non-privileged documents are found.

Request No. 82. All Documents and Things constituting, referencing, or concerning all patents that Opposer, or any entity or person related to Opposer, has filed for the products identified in Opposer’s United States Registration Nos. 4,495,083 and 4,488,745 for Opposer’s CHLORASHIELD mark, and any other products Opposer may intend to sell under the CHLORASHIELD mark, including research, memoranda, correspondence, and filings with the United States Patent and Trademark Office.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Request No. 83. All Documents and Things sufficient to show Opposer’s capabilities to research, test, develop, manufacture, produce, distribute, market, advertise, and/or sell identified in Opposer’s United States Registration Nos. 4,495,083 and 4,488,745 for Opposer’s CHLORASHIELD mark exclusively on its own, without collaborating with any other entity or person.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer

also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence in this trademark opposition. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Request No. 84. All Documents and Things constituting, referencing, or concerning any research, studies, pilot studies, clinical trials, or testing conducted by Opposer, Avery Dennison, or any other company, organization, entity, or person, to develop the products identified in Opposer's United States Registration Nos. 4,495,083 and 4,488,745 for Opposer's CHLORASHIELD mark.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Request No. 85. All Documents and Things sufficient to describe Opposer's platform of brands containing the prefix "CHLOR" or "CHLORA."

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things. Responding further, Opposer states that it does not have a platform of brands containing the prefix "CHLOR". Subject to and without waiving any objections, particularly those relating to relevance, Opposer states that all responsive and non-privileged documents have been produced.

Request No. 86. All Documents and Things sufficient to describe Opposer's plan to market any other brands containing the prefix "CHLOR" or "CHLORA" in the future.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things. Responding further, Opposer states that it does not have a platform of brands containing the prefix "CHLOR". Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Subject to and without waiving any objections, particularly those relating to relevance, Opposer states that responsive and non-privileged documents have been produced.

Request No. 87. All Documents and Things referencing or concerning Opposer's conception, evaluation, development, clearance, selection, adoption, design, first use, and/or plans for future use of THE CHLORAPREP ADVANTAGE mark, including when the mark was first adopted, the circumstances relating to its adoption, the individual or group that first selected the name, and why the name was selected.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Request No. 88. All communications between Opposer and any advertising, marketing, and/or branding agency referencing or concerning the CHLORASHIELD mark or any other of Opposer's brands containing the "CHLOR" or "CHLORA" prefix.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things, and compound with respect to seeking information on both the marketing of multiple products. Responding further, Opposer states that it does not have a platform of brands containing the prefix "CHLOR". Subject to and without waiving any objections, Opposer states that responsive documents have been produced and additional responsive documents are produced herewith.

Request No. 89. All Documents and Things constituting, referencing, or concerning market-research studies for the products sold or intended to be sold under the CHLORASHIELD mark, for any other of Opposer's products containing the "CHLOR" or "CHLORA" prefix, and for any other of Opposer's chlorhexidine products.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things, and compound with respect to seeking information on both the marketing of multiple products. Responding further, Opposer states that it does not have a platform of brands containing the prefix “CHLOR”. Subject to and without waiving any objections, Opposer states that responsive documents have been produced.

Request No. 90. All Documents and Things constituting, referencing, or concerning approvals by an Institutional Review Board for the products sold or intended to be sold under the CHLORASHIELD mark, for any other of Opposer’s products containing the “CHLOR” or “CHLORA” prefix, and for any other of Opposer’s chlorhexidine products.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Responding further, Opposer states that it does not have a platform of brands containing the prefix “CHLOR”. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Request No. 91. All Documents and Things sufficient to establish the volume of sales for the product sold under the CHLORASHIELD mark identified in Registration No. 4,488,745 since it has entered the market.

WRITTEN RESPONSE: Responsive, non-privileged documents are produced herewith and have been designated “Trade Secret-Commercially Sensitive” pursuant to the Protective Order in place in this matter.

Request No. 92. All Documents and Things sufficient to establish the volume of sales for the product sold under the CHLORASHIELD mark identified in Registration No. 4,495,083 since it has entered the market.

WRITTEN RESPONSE: Responsive, non-privileged documents are produced herewith and have been designated “Trade Secret-Commercially Sensitive” pursuant to the Protective Order in place in this matter.

Request No. 93. All Documents and Things sufficient to establish the

advertising expenditures for the product sold under the CHLORASHIELD mark identified in Registration No. 4,488,745 since it has entered the market.

WRITTEN RESPONSE: Responsive, non-privileged documents will be produced.

Request No. 94. All Documents and Things sufficient to establish the advertising expenditures for the products sold or intended to be sold under the CHLORASHIELD mark identified in Registration No. 4,495,083 since it has entered the market.

WRITTEN RESPONSE: Responsive, non-privileged documents will be produced.

Request No. 95. All Documents and Things referencing Registration Nos. or Application Serial Nos. of all trademarks or service marks, either registered or applied for, in International Classes 5 or 10 with the United States Patent and Trademark Office of which Opposer is aware that contain the letter string “CHLOR” or “CHLO.”

WRITTEN RESPONSE: Objection. This Request seeks information that is publicly available and can be accessed as easily by Applicant as it could be reproduced by Opposer.

Request No. 96. All Documents and Things referencing Registration Nos. or Application Serial Nos. of all trademarks or service marks, either registered or applied for, with the United States Patent and Trademark Office that cover products with chlorhexidine of which Opposer is aware that contain the letter string “CHLOR” or “CHLO.”

WRITTEN RESPONSE: Objection. This Request seeks information that is publicly available and can be accessed as easily by Applicant as it could be reproduced by Opposer.

Request No. 97. All Documents and Things referencing the descriptive nature of the CHLORAPREP mark, the CHLORASHIELD mark, or any of Opposer’s

marks that contain the prefix “CHLOR” or “CHLORA.”

WRITTEN RESPONSE: Objection. This Request is an improper request for a legal opinion. Responding further, Opposer states that it does not have a platform of brands containing the prefix “CHLOR”.

Request No. 98. All Documents and Things referencing or concerning Applicant’s use and/or application to register its slogan THE CHLORHEXIDINE ADVANTAGE, which is the subject of United States Application Serial Nos. 85/661,172 and 85/661,170.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Opposer also objects to this request because it seeks information not relevant to a claim or reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to this request to the extent it seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information.

Request No. 99. All Documents and Things supporting, tending to support, rebutting, or tending to rebut Opposer’s contention in Paragraph 12 of its Notice of Opposition that “[t]he use and registration of the Chloraderm, Chlorabsorb, Chlorabond and Chloradrape trademarks by the Applicant will cause the purchasing public and those who use or are familiar with Opposer’s goods to assume, erroneously, and to be confused, misled and/or deceived, that the Applicant’s Chloraderm, Chlorabsorb, Chlorabond and Chloradrape marks and goods are made by or originate with, are licensed by, endorsed or sponsored by, or are in some other way associated or connected with Opposer, all to Opposer’s great injury and irreparable damage.” (See Notice of Opposition ¶ 12.)

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for “all” documents and things. Responding further, Opposer states that all documents produced in this matter by either party support the above statement. Opposer reserves the right to supplement this response as more information becomes available through the discovery process.

Request No. 100. All Documents and Things supporting, tending to support, rebutting, or tending to rebut Opposer's contention in Paragraph 13 of Opposer's Notice of Opposition that "Applicant's filing of four (4) variations of the same mark – Chloraderm, Chlorabsorb, Chlorabond[,] and Chloradrape – for virtually identical goods, evidences a lack of bona fide intent to use the various marks filed in the applications . . ." (*See* Notice of Opposition ¶ 13.)

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things. Responding further, Opposer states that documents produced in this matter by Applicant, and the testimony of Dr. Foor and Mr. Gotro, support the above statement. Opposer reserves the right to supplement this response as more information becomes available through the discovery process.

Request No. 101. All Documents and Things supporting, tending to support, rebutting, or tending to rebut Opposer's contention in Opposer's Motion to Compel filed February 24, 2014 that "Applicant, who in December 2011[,] filed four separate applications for three different types of medical products, all four beginning with the prefix "chlora" and covering specific types of FDA regulated medical products, (1) has no ongoing business in manufacturing and selling such medical products; 2) it filed the four applications when it did not have three separate medical products under development; and 3) that Applicant has done nothing to develop three different medical products to be sold under four different chlora-formative marks since it ended its business relationship with Opposer in the summer of 2011." (*See* Opposer's Motion to Compel.)

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things. Responding further, Opposer states that documents produced in this matter by Applicant, and the testimony of Dr. Foor and Mr. Gotro, support the above statement. Opposer

reserves the right to supplement this response as more information becomes available through the discovery process.

Request No. 102. All Documents and Things Opposer identifies in, or relies upon in preparing, its responses to Applicant's Second Set of Interrogatories to Opposer, which accompany Applicant's Second Set of Requests for Production of Documents and Things to Opposer.

WRITTEN RESPONSE: Objection. Opposer objects to this request as overly broad and unduly burdensome with respect to its request for "all" documents and things. Responding further, Opposer states that responsive non-privileged documents have been produced.

Dated: October 16, 2014.

Respectfully Submitted,

DREITLER TRUE LLC

/Mary R. True/

Joseph R. Dreitler
Mary R. True
19 E. Kossuth Street
Columbus, OH 43206
Telephone: 614-449-6767

E-mail: jdreitler@ustrademarklawyer.com
E-mail: mtrue@ustrademarklawyer.com

*Attorneys for Opposer
CareFusion 2200, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2014, a true and correct copy of the foregoing was served via electronic mail upon Erin Hickey at hickey@fr.com.

/s/ Mary R. True

Mary R. True

Exhibit G



137 E. State Street- Suite 101
Columbus, Ohio 43215
August 26, 2013

Mary R. True
Telephone: (614) 545-6355

Facsimile: (614) 241-2169
mtrue@ustrademarklawyer.com

Via e-mail: martens@fr.com; hickey@fr.com

Lisa M. Martens, Esq.
Erin M. Hickey, Esq.
Fish & Richardson PC
12390 El Camino Real
San Diego, CA 92130

RE: *Carefusion 2200, Inc. v. Entrotech Life Sciences, Inc.*
Combined Opposition No.: 91206212

Dear Ms. Martens and Ms. Hickey,

We have reviewed Applicant's responses to Opposer's First Set of Interrogatories and Requests for Production of Documents. These responses raise numerous issues that we wish to bring to your attention.

As a preliminary matter, we do not believe that the responses represent a good faith effort to provide discovery. As you are aware, TBMP § 405.02 incorporates Fed. R. Civ. Pro. 26(b)(1) such that any non-privileged information that is relevant to a claim or defense of any party is discoverable. TBMP §404.04(b) and Fed. R. Civ. Pro. 33(b)(3) requires that all interrogatories be answered separately and fully. However, of the 24 interrogatories propounded, Applicant objected in 21 of its responses, and refused to provide any substantive answer in 7 responses.

TBMP § 406.02 and Fed. R. Civ. Pro. 34(a)(1)(A) makes discoverable any designated documents, electronically stored information, or designated tangible things within the scope of Rule 26(b)(1). Rule 34(b)(2)(B) requires the production or permitted inspection of all requested documents and things, or a written objection explaining the specific, legally-valid reason why the items requested should not be produced. Of the 27 requests for production propounded, Applicant objected in all 27 of its responses, and refused to produce any of the documents or things requested in 10 responses.

INTERROGATORIES

You have objected to Interrogatory No. 1 on the basis that it is overly broad and unduly burdensome because it requests Applicant to identify "all" meetings, telephones calls, emails, webinars, proposals, contracts and payments between "anyone" affiliated with Applicant, Opposer, or Carefusion 213 LLC. This objection is without merit: The Interrogatory is neither broad nor overly burdensome in scope because it is necessarily limited to communications "relating to chlorhexadine film," the chemical compound at the heart of the underlying trademark action. You also objected that the Interrogatory is unduly burdensome because it "seeks information or the identification of documents equally available to Opposer." This objection is similarly without merit: The federal courts have not recognized this rationale as a legitimate objection to discovery.¹ Finally, you objected that the Interrogatory "seeks information not relevant to a claim or defense." This objection is again unmeritorious: As noted above, the Interrogatory requests information on communications "relating to chlorhexadine film." Applicant's attempts to seek trademark registration for potentially competitive products containing chlorhexadine film are central to this controversy and Carefusion's opposition.

You have objected to Interrogatory No. 3 on the basis that it is overly broad and unduly burdensome. However, you have not made this objection with specificity, as required by Rule 33(b)(1)(4). General objections pled without a specific showing of the facts and reasoning supporting them are without merit.² You further objected that the Interrogatory "seeks information not relevant to a claim or defense." As noted above, the Interrogatory requests information on communications "relating to chlorhexadine film." Applicant's attempts to seek trademark registration for potentially competitive products containing chlorhexadine film are central to this controversy and Carefusion's opposition. Additionally, you objected that the Interrogatory "seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information" and that it "seeks information subject to a confidentiality agreement with a third party." However, you have again failed to explain the rationale behind this objection. A general objection of confidentiality pled without a specific showing of the facts and reasoning supporting them is without merit. Further, any concerns regarding the disclosure of confidential information should already be addressed by the Confidentiality and Protective Order issued in this matter on December 4th, 2012.

You have objected to Interrogatory No. 5 on the basis that it "seeks information not relevant to a claim or defense." This objection is without merit. The Interrogatory seeks identification of the chemical compounds used as ingredients in any product

¹ "The fact that the information sought is already known to the interrogator is not a valid ground for objection to the interrogatories ... [and the] fact that the information sought is equally available to the interrogator ... does not render the interrogatories objectionable." *Bibbs v. New River Community and Technical College*, 285 F.R.D. 382, 394 (S.D.W.V. 2012) [citations omitted]; *see also United States v. All Assets Held at Bank Julius Bauer & Co., Ltd.*, 276 F.R.D. 396, 399 (D.D.C. 2011); *United States v. Purdome*, 30 F.R.D. 338, 339-43 (W.D.Mo. 1962)

² *Medtronic, Inc. v. Pacesetter Systems, Inc.*, 222 USPQ 80, 83 (TTAB 1984) (party must articulate objections to interrogatories with particularity)

Applicant intends to sell under its trademarks. Applicant's attempts to seek trademark registration for potentially competitive products containing chlorhexadine film are central to this controversy and Carefusion's opposition. You then answer the Interrogatory by claiming that "the products Applicant currently intends to sell do not have "chemical names." This answer is evasive and highly suggestive of legal gamesmanship. By the plain meaning of its wording, the Interrogatory requests identification of all chemical ingredients contained within the products Applicant intends to sell under its Marks. Applicant cannot deny that these products contain chemicals, and that those chemicals have names, or at least identifiers. Applicant must respond to this Interrogatory by identifying each of the chemicals present in the products Applicant intends to sell under each of Applicant's Marks.

You have objected to Interrogatory No. 7 on the basis that it is overly broad and unduly burdensome because it requests Applicant to identify "all documents filed with FDA for each product that Applicant intends to sell." This objection is without merit: The Interrogatory is neither broad nor overly burdensome in scope because it is necessarily limited to products Applicant intends to sell "under each of Applicant's Marks," which are central to the underlying action. Further, you have not alleged with specificity in what way the Interrogatory is unduly broad or burdensome. General objections pled without a specific showing of the facts and reasoning supporting them are without merit. You further objected that the Interrogatory "seeks information not relevant to a claim or defense." Rule 26(b)(1) defines as relevant any information "reasonably calculated to lead to the discovery of admissible evidence." Applicant's potential marketing and sale of products under Applicant's Marks lies at the heart of this controversy and Carefusion's opposition. Accordingly, any documents filed by Applicant with the FDA concerning such products are relevant to the claims and defenses of this case.

You have objected to Interrogatory No. 10 on the basis that it is overly broad and unduly burdensome. You have further objected on the basis that that the Interrogatory "seeks information not relevant to a claim or defense." As noted above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Interrogatory is overly broad, burdensome, or irrelevant--or you must provide the requested discovery.

You have objected to Interrogatory No. 11 on the basis that it is overly broad and unduly burdensome because it requests Applicant to identify "each employee and each officer" with knowledge of agreements between Entrofloor and Carefusion 213, LLC. This objection is without merit: The Interrogatory is neither broad nor overly burdensome in scope because it is necessarily limited to knowledge of agreements "relating to chlorhexadine film". You further objected on the basis that the Interrogatory "seeks information or the identification of documents equally available to Opposer." As noted above, the fact that the information sought may be available to the interrogator is not a valid ground for objection. You further objected on the basis that that the Interrogatory "seeks information not relevant to a claim or defense." As shown above, general

objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Interrogatory is overly broad, burdensome, or irrelevant--or you must provide the requested discovery.

You have objected to Interrogatory No. 12 on the basis that it is overly broad and unduly burdensome because it requests Applicant to identify "each employee and each officer" who had any involvement in the proposed joint development between Applicant or Entrofoor and Carefusion 213, LLC. This objection is without merit: The Interrogatory is neither broad nor overly burdensome in scope because it is necessarily limited to knowledge "relating to chlorhexadine film," the chemical compound at the heart of the underlying trademark action. You further objected on the basis that the Interrogatory "seeks information or the identification of documents equally available to Opposer." As noted above, the fact that the information sought is already available to the interrogator is not a valid ground for objection. You further objected on the basis that that the Interrogatory "seeks information not relevant to a claim or defense." As shown above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Interrogatory is overly broad, burdensome, or irrelevant--or you must provide the requested discovery.

You have objected to Interrogatory No. 20 on the basis that it is overly broad and unduly burdensome because it requests Applicant to identify "any product" sold by Applicant for which FDA approval has been requested or obtained. This objection is without merit: The Interrogatory is neither broad nor overly burdensome in scope because it is necessarily limited to products sold "under Applicant's mark," and the trademark and sale of such products is central to this controversy and Carefusion's opposition. You further objected on the basis that that the Interrogatory "seeks information not relevant to a claim or defense." As noted above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Interrogatory is overly broad, burdensome, or irrelevant--or you must provide the requested discovery.

Additionally, although you have provided answers to Interrogatories No. 2, 4, 8, 9, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, and 24, your answers were often preceded by the following generic objections: 1. Interrogatory is overly broad and unduly burdensome; 2. Interrogatory seeks information not relevant to a claim or defense; 3. Interrogatory seeks information or the identification or documents equally available to Opposer.; 4. Interrogatory seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information; and 5. Interrogatory calls for information protected by attorney-client privilege or work-product immunity. These objections are insufficient. As noted above, general objections based on scope, relevance, and burdensomeness pled without a specific showing of the facts and reasoning supporting them are without merit. Further, the fact that the information sought is already available to the interrogator is not a valid ground for objection. Additionally, an objection of confidentiality or privilege must also be pled with specificity, so that the propounding party may identify the nature

of the privilege asserted, and the way in which information requested falls under that privilege. Moreover, if the Interrogatory requests the identification of documents, the responding party must provide a privilege log listing each document, its drafter and recipient, and the nature of the privilege asserted.³ The provision of a privilege log is not only required by the F.R.C.P.; it is an essential aid to the Court in the resolution of claims of privilege. The mere generic allegation of confidentiality or privilege is not a sufficient objection to a discovery request. To the extent that any of your answers to the preceding Interrogatories were limited--or failed to provide all responsive information available to you--based on these unmeritorious objections, your responses are insufficient. You must remove the improper objections and provide supplemental responses to each such Interrogatory, or represent that no information has been withheld based upon these objections.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

You have objected to Request No. 1 on the basis that it is overly broad and unduly burdensome because it requests Applicant to identify "all" meetings, telephones calls, emails, webinars, proposals, contracts and payments between "anyone" affiliated with Applicant, Opposer, or Carefusion 213, LLC. This objection is without merit: The Request is neither broad nor overly burdensome in scope because it is necessarily limited to communications "relating to chlorhexadine film," the chemical compound at the heart of the underlying trademark action. You further objected on the basis that the Request "seeks information or the identification of documents equally available to Opposer." As noted above, the fact that the information sought is already available to the requestor is not a valid ground for objection. You further objected on the basis that that the Request "seeks information not relevant to a claim or defense." As shown above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Request is overly broad, burdensome, or irrelevant--or you must provide the requested discovery. You further objected on the basis that the Request "calls for documents protected by the attorney-client privilege or work-product immunity, or otherwise immune from discovery." However, an objection of privilege must be pled with specificity, so that the propounding party may identify the nature of the privilege asserted, and the way in which information requested falls under that privilege. Also, the responding party must provide a privilege log listing each document, its drafter and recipient, and the nature of the privilege asserted. You have provided no privilege log, nor have you pled your objection with the requisite specificity. As such, your response is insufficient.

³ "Under Rule 33(d), certain documents which would otherwise be responsive may be withheld based on privilege, provided the exercise of the privilege does not prevent the interrogating party from ascertaining or deriving complete answers to the interrogatories and the withheld documents are listed on a privilege log." *O'Connor v. Boeing North American, Inc.*, 185 F.R.D. 272, 279 (C.D.Cal. 1999); *See also* *Grant v. Target Corp.*, 281 F.R.D. 299, 308 (S.D.Ohio 2012)

You have objected to Request No. 2 on the basis that it is overly broad and unduly burdensome because it requests Applicant to produce "all" documents identified in response to Opposer's First Set of Interrogatories. This objection is without merit. As shown above, general objections pled without a specific showing of the facts and reasoning supporting them are insufficient. You must either give specific reasoning for your objection--setting out in what way the Request is overly broad or burdensome--or you must provide the requested discovery. You then answered that Applicant identified no documents in response to the Interrogatories. This is true, (with the exception of Interrogatory No. 6, in which you respond by reference to Applicant's trademarks) but only because you have improperly refused to respond to any of the Interrogatories requesting such information.

You have objected to Request No. 7 on the basis that it "calls for documents protected by the attorney-client privilege or work-product immunity, or otherwise immune from discovery." As noted above, an objection of privilege must be pled with specificity, so that the propounding party may identify the nature of the privilege asserted, and the way in which information requested falls under that privilege. Also, the responding party must provide a privilege log listing each document, its drafter and recipient, and the nature of the privilege asserted. You have provided no privilege log, nor have you pled your objection with the requisite specificity. As such, your response is insufficient. You then answered that Applicant is unaware of "any responsive, non-privileged documents at this time." If your response is intended to indicate that such documents exist, but are all privileged, then you must include them in a privilege log. Until and unless your privilege objection is properly pled, you must produce the requested discovery.

You have objected to Request No. 10 on the basis that that it is overly broad and unduly burdensome because it requests Applicant to produce "all" documents relating to research, studies or testing conducted by Applicant or Entrofoor Medical, LLC. This objection is without merit: The Request is neither broad nor overly burdensome in scope because it is necessarily limited to research, studies and testing "relating to chlorhexadine film". Further, the scope of the Request is additionally limited to any documents "that have been provided to any third party from September 2011 until the present." You also objected on the basis that that the Request "seeks information not relevant to a claim or defense." As shown above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Request is overly broad, burdensome, or irrelevant--or you must provide the requested discovery. You further objected on the basis that the Request "seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information." However, you have failed to specify the reasoning behind this objection. As shown above, an objection alleging confidentiality must specify the type and nature of the documents to be protected, and the rationale for excluding them from production. Additionally, any concerns regarding the disclosure of confidential information should already be addressed by the Confidentiality and Protective Order issued in this matter on December 4th, 2012.

You have objected to Request No. 11 on the basis that it is overly broad and unduly burdensome because it requests Applicant to produce "all" documents relating to research, studies or testing conducted by Applicant. This objection is without merit: The Request is neither broad nor overly burdensome in scope because it is necessarily limited to research, studies and testing "relating to chlorhexadine film". Further, the scope of the Request is additionally limited to any documents created "between January 1, 2010 and December 31, 2011." You also objected on the basis that that the Request "seeks information not relevant to a claim or defense." As shown above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Request is overly broad, burdensome, or irrelevant--or you must provide the requested discovery. You further objected on the basis that the Request "seeks disclosure of confidential, proprietary, trade secret, or other competitively sensitive information." However, you have failed to specify the reasoning behind this objection. As shown above, an objection alleging confidentiality must specify the type and nature of the documents to be protected, and the rationale for excluding them from production. Additionally, any concerns regarding the disclosure of confidential information should already be addressed by the Confidentiality and Protective Order issued in this matter on December 4th, 2012.

You have objected to Request No. 13 on the basis that it is "vague and ambiguous as to 'chemical name.'" This objection is without merit. The Request seeks production of documents identifying the chemical compounds used as ingredients in any product Applicant intends to sell under Applicant's Marks. Applicant's attempts to seek trademark registration for potentially competitive products containing chlorhexadine film are central to this controversy and Carefusion's opposition. You then answer the Interrogatory by claiming that the products Applicant currently intends to sell "do not have chemical names." This answer is evasive and highly suggestive of legal gamesmanship. By the plain meaning of its wording, the Request seeks production of documents identifying all chemical ingredients contained within the products Applicant intends to sell under its Marks. Applicant cannot deny that these products contain chemicals, and that those chemicals have names, or at least, identifiers. Applicant must respond to this Request by producing all documents containing or identifying any of the chemicals present in its trademarked products.

You have objected to Request No. 15 on the basis that it is overly broad and unduly burdensome because it requests Applicant to produce "all" documents filed with the FDA that Applicant intends to sell. This objection is without merit: The Request is neither broad nor overly burdensome in scope because it is necessarily limited to products to be sold "under each of Applicant's Marks" and Applicant's attempt to seek trademark registration for the sale of such products is central to this controversy and Carefusion's opposition. You further objected on the basis that that the Request "seeks information not relevant to a claim or defense." As shown above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the

Request is overly broad, burdensome, or irrelevant--or you must provide the requested discovery.

You have objected to Request No. 20 on the basis that it is overly broad and unduly burdensome because it requests Applicant to produce "all" patent applications that Applicant or any related party (including Entrofoor Medical, LLC) has filed." This objection is without merit: The Request is neither broad nor overly burdensome in scope because it is necessarily limited to "any product that Applicant intends to sell under any of Applicant's Marks," and the trademark and sale of such products is central to this controversy and Carefusion's opposition. You further objected on the basis that that the Request "seeks information not relevant to a claim or defense." As shown above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Request is overly broad, burdensome, or irrelevant--or you must provide the requested discovery. You further objected on the basis that the Request "seeks information or the identification of documents equally available to Opposer." As noted above, the fact that the discovery sought is already available to the requestor is not a valid ground for objection.

You have objected to Request No. 21 on the basis that it is overly broad and unduly burdensome because it requests Applicant to produce "all" documents between Applicants (or Entrofoor Medical LL) and Opposer's related entity, Carefusion 213 LLC. This objection is without merit: The Request is neither broad nor overly burdensome in scope because it is necessarily limited to documents "related to the joint development relating to chlorhexadine film". You further objected on the basis that that the Request "seeks information not relevant to a claim or defense." As shown above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Request is overly broad, burdensome, or irrelevant--or you must provide the requested discovery. You further objected on the basis that the Request "seeks information or the identification of documents equally available to Opposer." As noted above, the fact that the discovery sought is already available to the requestor is not a valid ground for objection.

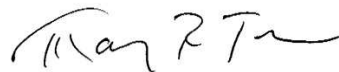
You have objected to Request No. 26 on the basis that it is overly broad and unduly burdensome because it requests Applicant to produce "all" documents relating to research performed by Applicant or Entrofoor Medical, LLC. This objection is without merit: The Request is neither broad nor overly burdensome in scope because it is necessarily limited to research, studies and testing "relating to chlorhexadine film". Further, the scope of the Request is additionally limited to any documents created "until December 31, 2011." You further objected on the basis that that the Request "seeks information not relevant to a claim or defense." As shown above, general objections pled without a specific showing of the facts and reasoning supporting them are without merit. You must either give specific reasoning for your objection--setting out in what way the Request is overly broad, burdensome, or irrelevant--or you must provide the requested discovery. You further objected on the basis that the Request "seeks disclosure of

confidential, proprietary, trade secret, or other competitively sensitive information." However, you have failed to specify the reasoning behind this objection. As shown above, an objection alleging confidentiality must specify the type and nature of the documents to be protected, and the rationale for excluding them from production. Additionally, any concerns regarding the disclosure of confidential information should already be addressed by the Confidentiality and Protective Order issued in this matter on December 4th, 2012.

You have promised to provide discovery "on a reasonable date and at a reasonable time to be agreed upon mutually by the parties" in your answers to Request No. 3, 4, 5, 6, 8, 9, 12, 14, 16, 17, 18, 19, 22, 23, 24, 25 and 27. However, it is hard to believe that the seventy-six (76) pages of documents produced on August 6, 2013 are the only responsive documents in Applicant's possession, custody or control. Please either confirm that Applicant has no other responsive, non-privileged documents (and provide a privilege log) or supplement your production immediately.

It is our hope that we may resolve these issues as quickly and amicably as possible. Please send us a prompt reply so that we can meet and confer and identify those responses, if any, which you will agree to amend, and which issues will need to be presented to the Board for resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary R. True", with a stylized flourish at the end.

Mary R. True

Cc: Joseph R. Dreitler, Esq.

Exhibit H

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF Trademark Application Serial Nos. 85/499349; 85/499345;
85/499337 and 85/499332**

DATE OF PUBLICATION: May 29, 2012

Carefusion 2200, Inc.,

Opposer,

**Combined Opposition No: 91-
206,212**

v.

Entrotech, Inc.

Applicant

Pursuant to Rule 2.120(d) of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Opposer, CareFusion 2200, Inc. hereby requests that Applicant, Entrotech, Inc. provide documents responsive to the following Requests within thirty (30) days after the service hereof to the offices of Dreitler True LLC, 137 E. State Street, Columbus, OH 43215. These Requests are intended to be continuing in nature and any documents which may be discovered subsequent to the service of responsive documents should be brought to the attention of Opposers through Supplemental Answers, within a reasonable time following such discovery, pursuant to Rule 26 of the Federal Rules of Civil Procedure.

INSTRUCTIONS AND DEFINITIONS

Opposer incorporates the Definitions and Instructions from Opposer's First Set of Requests for Production of Documents as if fully set forth herein.

REQUESTS

1. All documents relating to business plans, proposals and any other efforts to sell or offer to sell products under Applicant's Marks.
2. All documents relating to plans and proposals to conduct both pilot studies and clinical trials for each product to be sold under Applicant's Marks
3. All documents relating to FDA approvals for conducting pilot studies and clinical trials for each product to be sold under Applicant's Marks
4. All documents relating to clinical trial protocols each clinical trial for each product to be sold under Applicant's Marks
5. All documents relating to approvals by an Institutional Review Board for each product to be sold under Applicant's Marks
6. All documents relating to results of any pilot studies and clinical trials for each product to be sold under Applicant's Marks
7. All documents relating to Contracts with any advertising agency or marketing agency relating to the sale of each product sold under Applicant's Marks.

Dated: January 21, 2014.

Respectfully Submitted,

DREITLER TRUE LLC

/Mary R. True/

Joseph R. Dreitler
Mary R. True
137 E. State St.
Columbus, OH 43215
Telephone: 614-545-6355
Facsimile: 614-241-2169
E-mail: jdreitler@ustrademarklawyer.com
E-mail: mtrue@ustrademarklawyer.com

*Attorneys for Opposer
CareFusion 2200, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2014, a true and correct copy of the foregoing was served via electronic mail upon Lisa M.Martens, Esq. at martens@fr.com and Erin Hickey at hickey@fr.com.

/s/ Mary R. True

Mary R. True

Exhibit I

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial Nos.:

Ser. No. 85/499,349 for the mark **CHLORADERM**
Ser. No. 85/499,345 for the mark **CHLORABSORB**
Ser. No. 85/499,337 for the mark **CHLORABOND**
Ser. No. 85/499,332 for the mark **CHLORADRAPE**

Filed on December 19, 2011

Published in the *Official Gazette* on May 29, 2012

CAREFUSION 2200, INC.,

Opposer,

v.

ENTROTECH LIFE SCIENCES, INC. (by
assignment from ENTROTECH, INC.),

Applicant.

Opposition No.: 91-206,212

**OPPOSER'S RESPONSES AND OBJECTIONS TO APPLICANT'S
FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer CareFusion 2200, Inc. ("Opposer") makes the following responses and objections to Applicant Entrotech Life Sciences, Inc.'s ("Applicant") First Set of Interrogatories:

GENERAL OBJECTIONS

1. Opposer objects to the Interrogatories to the extent that they purport to impose upon Opposer burdens beyond those imposed under the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

2. Opposer objects to the “Instructions and Rules of Construction” contained in the Interrogatories to the extent that they purport to require Opposer to do more than required by Rules 26, 33 and 34 of the Federal Rules of Civil Procedure or Trademark Rule 2.120.

3. Opposer objects to the use of the term “all documents” in the Interrogatories to the extent the term requires more than is required under the Federal Rules of Civil Procedure or Trademark Rule 2.120, and to the extent that the term makes the Interrogatories overly broad, unduly burdensome, and/or to the extent that the term would result in the production of documents and information that are merely cumulative. Moreover, Opposer objects to the use of the term “all documents” to the extent it requires Opposer to identify documents not within its possession, custody or control.

4. Opposer objects to the Interrogatories to the extent that they require Opposer to provide information in a form other than the form in which Opposer keeps the information in the ordinary course of business. Opposer will produce non-privileged, responsive information in the form in which Opposer keeps it in the ordinary course of business.

5. Opposer objects to Interrogatories to the extent that they call for information or documents protected from discovery or disclosure by any privilege or doctrine, including without limitation, the attorney-client privilege, or the work product doctrine, or any other applicable privilege or exemption, including without limitation, information that (i) was prepared for, or in anticipation of litigation; (ii) constitutes attorney work product; (iii) reflects attorney-client communications; or (iv) is otherwise privileged or protected from disclosure. Such information shall not be disclosed in response to Applicants’ Interrogatories, and any inadvertent disclosure

thereof shall not be a waiver of any privilege with respect to such information or of any work product protection that may attach thereto.

6. Opposer objects to Interrogatories to the extent that they request proprietary or trade secret information in Opposer's possession that is confidential and proprietary information of non-parties, or information that Opposer is under an obligation to a third party to not disclose, and such information will only be produced in accordance with the terms of the Stipulated Protective Order entered into in this proceeding.

7. Opposer objects to the Interrogatories to the extent they seek information that is confidential, proprietary or otherwise sensitive information belonging to Opposer. Such confidential information will only be produced in accordance with the Stipulated Protective Order entered into in this proceeding.

8. Opposer objects to the Interrogatories to the extent that they seek to have Opposer identify documents in lieu of or in addition to producing such documents. Subject to its general and specific objections, Opposer will produce the documents requested by Applicant unless otherwise immune from discovery. To the extent that documents are withheld as attorney-client privilege or subject to work-product immunity, they will be identified in accordance with Rule 26(b)(5) of the Federal Rules of Civil Procedure.

9. Opposer reserves its right to further supplement its answers to Applicant's Interrogatories as necessary or as further required by the Court or otherwise.

10. No response to any of these Interrogatories shall be construed as an acknowledgment or admission that any information or documents provided are admissible into evidence, and Opposer expressly reserves any and all evidentiary objections. Moreover, no specific reference to documents or Bates numbered productions shall be deemed conclusive or otherwise be construed against Opposer as a limitation, admission or otherwise, and has been provided only for convenience to the parties, in light of the potential volumes of documents involved.

Each of the above General Objections shall be deemed continuing and is incorporated into the specific responses set forth below, whether or not specifically stated in response to each Interrogatory, and are not waived or in any way limited by the responses below.

INTERROGATORIES

Interrogatory No. 1. Identify and describe in detail all meetings, telephone calls, emails, webinars, proposals, contracts and payments between anyone affiliated with Opposer (including but not limited to CareFusion 213, LLC (“CareFusion 213”)) and Opposer, relating to chlorhexidine film.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking for the “identification” of information that is more readily obtained from documents being produced in this matter. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer’s possession, custody and control. Opposer further objects to this interrogatory to the extent it is seeking the production of commercially sensitive business information, and information that is not relevant to a trademark opposition proceeding. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to representative, responsive, non-privileged documents produced herewith, which may include documents that have been designated “CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE” in accordance with the Stipulated Protective Order.

Interrogatory No. 2. Identify and describe in detail any research, studies, or testing relating to chlorhexidine film conducted by Opposer or CareFusion 213.

RESPONSE: Opposer objects to this interrogatory, as presently drafted, as vague, overly broad and unduly burdensome, and seeking information that is not relevant to a trademark opposition proceeding.

Interrogatory No. 3. Identify each person Opposer believes to have knowledge of facts relevant to any issue in this proceeding and describe the issues upon which Opposer believes each person has knowledge.

RESPONSE: Objection. This Interrogatory, as presently worded, is overly broad in its request for identification of each person Opposer believes to have any knowledge of any issue in these proceedings. Opposer further objects to this request to the extent it would have Opposer identify and designate persons not employed by or associated with

Opposer. Subject to and without waiving any objections and responding to the best of Opposer's ability, Opposer refers Applicant to the persons and topics identified in its Initial Disclosures. Opposer also identifies Scott Boucher, VP of Sales, Infection Prevention as a person knowledgeable regarding Opposer's sales and marketing of products sold under Opposer's Marks. Opposer reserves the right to supplement this response as additional information becomes available during discovery.

Interrogatory No. 4. State the date of first use and, if different, the date of first use in United States commerce, of each of Opposer's Marks for each of Opposer's Goods, and/or the intended dates of first use and first use in commerce, and the circumstances surrounding each such first use and, if different, each such first use in United States commerce.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking Opposer to provide information that is readily available to Applicant via the USPTO website. Subject to and without waiving any objections, Opposer states that the date of first use and date of first use in U.S. commerce for topical antimicrobial solutions and broad-spectrum antiseptics sold under the CHLORAPREP mark was June 7, 1994.

Interrogatory No. 5. Identify each product that Opposer has offered for sale, currently offers for sale, or plans to offer for sale in the future under each of Opposer's Marks.

RESPONSE: Opposer objects to this interrogatory to the extent it would have Opposer identify "each product" it has ever offered for sale under Opposer's Marks. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer's possession, custody and control. Opposer further objects to this interrogatory to the extent it is seeking the production of commercially sensitive business information. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to representative, responsive, non-privileged documents produced herewith, which may include documents that have been designated "CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE" in accordance with the Stipulated Protective Order. Responding further, Opposer states that it offers topical antimicrobial solutions and broad-spectrum antiseptic products under the ChloraPrep mark, and that it plans to use the ChloraShield mark on surgical incise drapes and/or antimicrobial catheter patch dressings.

Interrogatory No. 6. Identify the past, current, and future wholesale and/or retail price of each of Opposer's Goods sold or planned to be sold under Opposer's Marks.

RESPONSE: Objection. This Request is overly broad and unduly burdensome and seeks information not reasonably calculated to lead to the discovery of admissible evidence, particularly with respect to information on wholesale pricing. Opposer further objects to this request to the extent it is seeking commercially sensitive information. Subject to, and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to responsive, non-privileged documents produced herewith at CF 00024913, which has been

designated “CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE” in accordance with the Stipulated Protective Order.

Interrogatory No. 7. For each of Opposer’s Goods, identify, in round numbers, by calendar or fiscal year, starting with 1994 until the present, the volume of sales, in terms of dollars, derived from each of Opposer’s Goods sold under Opposer’s Marks, and the number of units sold under Opposer’s Marks.

RESPONSE: Opposer objects to this interrogatory as overly broad and unduly burdensome in requesting information dating back nearly twenty years. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer’s possession, custody and control. Opposer further objects to this interrogatory to the extent it is seeking the production of commercially sensitive business information. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to responsive, non-privileged documents produced herewith at CF 00024914, which has been designated “CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE” in accordance with the Stipulated Protective Order.

Interrogatory No. 8. Identify each document, report, or business plan prepared by, or on behalf of, Opposer or any of its predecessors-in-interests, including Medi-Flex, Inc., relating to the design, development, and decision to adopt Opposer’s CHLORAPREP Marks and/or CHLORASHIELD Marks, and the person(s) most knowledgeable about the documents, reports, business plans, and the design, development, and decision to adopt Opposer’s Marks.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking for the “identification” of information that is more readily obtained from documents being produced in this matter. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer’s possession, custody and control. Opposer further objects to this interrogatory to the extent it is seeking the production of commercially sensitive business information. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to representative, responsive, non-privileged documents produced herewith, which may include documents that have been designated “CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE” in accordance with the Stipulated Protective Order. Responding further, Opposer objects to this interrogatory to the extent it would have Opposer identify and designate as “most knowledgeable” persons not employed by or associated with Opposer. Subject to and without waiving any objections, Opposer identifies Jan Creidenberg, Jennifer Raeder-Devens, Jason Strohm and Scott Boucher as persons employed by Opposer who are knowledgeable about the topics set forth above.

Interrogatory No. 9. Identify each trademark search, clearance search, investigation, or other inquiry conducted by, or on behalf of, Opposer or any of its predecessors-in-interests, including Medi-Flex, Inc., to determine the availability of Opposer's CHLORAPREP Marks and/or CHLORASHIELD Marks for each of Opposer's Goods, and the person(s) most knowledgeable about each search, investigation, or inquiry.

RESPONSE: Opposer objects to this interrogatory to the extent that it seeks information that is not in Opposer's possession, custody and/or control, and to the extent it seeks information protected by the attorney-client privilege. Responding further, Opposer has confirmed that its outside counsel conducted a trademark search on the CHLORASHIELD mark. Responding further, Opposer reserves the right to supplement this response as additional information becomes available.

Interrogatory No. 10. Identify representative labels, tags, stickers, containers, or other items of packaging or labeling to which Opposer's Marks are applied or affixed and used in connection with the offering for sale, or sale, of each of Opposer's Goods under each of Opposer's Marks, by stating the manner in which the item was used, the inclusive dates during which the item was used, and the geographic market area in which the item was used and distributed.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking for the "identification" of information that is more readily obtained from documents being produced in this matter. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer's possession, custody and control. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to representative, responsive, non-privileged documents produced herewith.

Interrogatory No. 11. Identify, by stating the name, address, and account representative, all manufacturers, distributors, wholesalers, retailers, and/or other businesses, organizations, entities or Person(s) that produce, or have produced, sell, or have sold, Opposer's Goods under Opposer's Marks, if any.

RESPONSE: Objection. This Request is overly broad and unduly burdensome and seeks information not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent that it seeks documents that are not in Defendant's possession, custody and control. Defendant further objects to this Request to the extent it is seeking the production of commercially sensitive business information. Subject to

and without waiving any objections, Opposer states that CareFusion Corporation is the manufacturer of products sold under the CHLORAPREP mark and that products to be sold under the CHLORASHIELD mark will be manufactured by Avery Dennison. Responding further, and subject to Fed. R. Civ. Pro. 33(d), responsive, non-privileged documents are produced herewith, which may include documents that have been designated “CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE” in accordance with the Stipulated Protective Order.

Interrogatory No. 12. Describe in detail the demographics of the customers and prospective customers for each of Opposer’s Goods advertised, sold, and/or intended to be advertised or sold under Opposer’s Marks.

RESPONSE: Opposer’s CHLORAPREP products are used in hospitals by nurses, doctors, and other medical professionals.

Interrogatory No. 13. Describe in detail the channels of trade for each of Opposer’s Goods advertised, sold, and/or intended to be advertised or sold under Opposer’s Marks.

RESPONSE: Opposer’s CHLORAPREP products are sold through a number of approved distributors, including McKesson, Cardinal Health, and Owens & Minor. These distributors purchase CHLORAPREP products from CareFusion and then resell those products to hospitals. Opposer also sells products to approved kit manufacturers. These manufacturers buy CHLORAPREP applicators and then include those applicators as part of pre-packaged kits, such as vascular access insertion kits, that include several different types of products sold under different names and trademarks.

Interrogatory No. 14. Identify each and every medical product and/or device currently sold or intended to be sold by Opposer under Opposer’s Marks, including the manufacturers of each such product, the type and purpose of each such product, the brand name under which each such product is sold or intended to be sold, and the price for each such product.

RESPONSE: See response to Interrogatory No. 5.

Interrogatory No. 15. Describe each means by which Opposer advertises, markets or promotes, or has advertised, marketed or promoted, the sale of Opposer’s Goods under Opposer’s Marks, including the types of media used.

RESPONSE: Products bearing Opposer’s CHLORAPREP trademark are advertised in trade journals and magazines, at trade shows, through direct marketing to users and purchasers of Opposer’s CHLORAPREP products and competing products, and through the distribution of collateral material by CareFusion’s sales force. CareFusion markets and

advertises its CHLORAPREP products through magazines and journals such as the *Operating Room Nursing Journal*, *Journal of Cardiovascular Nursing*, *Nephrology Nursing Journal*, *Fortune*, *Journal of Infusion Nursing*, *Healthcare Purchasing News* and *Infection Control Today*, and through the distribution of literature to over 5800 hospitals. CareFusion further provides collaborative materials through its sales force that describe the financial benefit of using CHLORAPREP products through its assistance in reducing infection risks and describe those benefits per procedure. CareFusion does web advertising, which includes photos and videos on the CareFusion website and web banners. CareFusion also posts videos on YouTube, which are accessible by searching “CareFusion Chloraprep” on the YouTube home page. CareFusion also promotes its CHLORAPREP products on its Facebook and Twitter sites.

Interrogatory No. 16. Identify each catalog, brochure, flyer, poster, sales sheet, coupon, direct mailer, price list, poster, publicity release, or other item of promotional material distributed by Opposer which depicts, refers, or relates to Opposer’s Marks and Opposer’s Goods sold under Opposer’s Marks, and state the inclusive dates during which each such item of promotional material has been used and distributed by Opposer.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking for the “identification” of information that is more readily obtained from documents being produced in this matter. Opposer further objects to this interrogatory as overly broad to the extent it is requesting more than representative examples of the requested materials. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer’s possession, custody and control. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to responsive, non-privileged representative examples included in the documents produced herewith.

Interrogatory No. 17. Identify each print advertisement that refers or relates to Opposer’s Goods sold under Opposer’s Marks, and state the inclusive dates during which each such advertisement has been used, and the publications in which it has appeared.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking for the “identification” of information that is more readily obtained from documents being produced in this matter. Opposer further objects to this interrogatory as overly broad to the extent it is requesting more than representative examples of the requested materials. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer’s possession, custody and control. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to representative, responsive, non-privileged representative examples included in the documents produced herewith.

Interrogatory No. 18. Identify each direct-mail marketing campaign used by Opposer to promote the sale of Opposer's Goods sold under Opposer's Marks, and state the inclusive dates during which each such direct-mail marketing campaign has been used or circulated, the geographic markets in which each such direct mail marketing campaign has been used or circulated, and the consumers targeted by each such direct mail marketing campaign.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking for the "identification" of information that is more readily obtained from documents being produced in this matter. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer's possession, custody and control. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to representative, responsive, non-privileged representative examples included in the documents produced herewith.

Interrogatory No. 19. Identify each trade show at which Opposer has advertised Opposer's Goods under and/or in connection with Opposer's Marks and provide the dates and locations for each such trade show.

RESPONSE: Opposer objects to this interrogatory as overly broad and unduly burdensome. Opposer objects to this interrogatory to the extent it is asking for the "identification" of information that is more readily obtained from documents being produced in this matter. Subject to and without waiving any objections, Opposer states that it has promoted its CHLORAPREP products at the following tradeshow:

- APIC (Association for Professionals in Infection Control and Epidemiology)
- AORN (Association of Perioperative Registered Nurses)
- SHEA (Society for Healthcare Epidemiology of America)
- NTI (National Teaching Institute & Critical Care Exposition)
- INS (Infusion Nurses Society)
- AABB (American Association of Blood Banks)
- AACN (American Association of Critical-Care Nurses)
- NHIA (National Home Infusion Association)
- ANNA (American Nephrology Nurses Association)
- AVA (Association of Vascular Access)
- AAPS (American Academy of Orthopedic Surgeons)
- NAON (National Association of Orthopedic Nurses)
- ASCA (Ambulatory Surgery Center Association)

Responding further, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to representative, responsive, non-privileged representative documents produced herewith.

Interrogatory No. 20. Identify each domain-name registration and associated web page(s) or web site(s) that refer or relate in any way to Opposer's Marks or Opposer's Goods sold under Opposer's Marks.

RESPONSE: Opposer objects to this Interrogatory to the extent it seeks information not in Opposer's possession, custody or control. Subject to and without waiving any objections, Opposer states that products bearing Opposer's CHLORAPREP marks are described on CareFusion's website at <http://www.carefusion.com/medical-products/carefusion-brands/chloraprep/> and other pages accessible from that page. CareFusion is the registrant of the domain name www.chloraprep.com, which redirects to the carefusion.com home page. CareFusion also posts videos on YouTube, which are accessible by searching "CareFusion Chloraprep" on the YouTube home page. CareFusion also promotes its CHLORAPREP products on its Facebook and Twitter sites.

Interrogatory No. 21. Identify each person that is, or has been, responsible, or who has the most knowledge concerning, the advertising, marketing, or promotion of Opposer's Goods under Opposer's Marks, as well as each outside firm, agency, or other business which prepared or assisted in the creation, design, preparation and manufacture of the advertising promotional, and marketing materials identified in the answer to the foregoing Interrogatory Nos. 12 through 17.

RESPONSE: Opposer objects to this interrogatory as overly broad in its request for the identification of "each" person and/or business involved in the creation, design, preparation and manufacture of its promotional materials. Subject to and without waiving any objections, Opposer identifies Scott Boucher, VP of Sales, Infection Prevention as a person knowledgeable on this topic. Responding further, Opposer states that it has used several outside agencies in connection with creation, design, preparation and manufacture of its advertising promotional materials over the years, and that currently it most frequently uses the agencies Sullivan, Higdon and Sink, Inc., Ark Media, Inc. and Barnstorming, Inc.

Interrogatory No. 22. Identify each state in the United States in which Opposer's Goods have been sold or are intended to be sold under Opposer's Marks, for each year from 1994 to the present.

RESPONSE: Products bearing Opposer's CHLORAPREP mark have been sold continuously throughout the United States since 1994.

Interrogatory No. 23. State Opposer's total annual revenues derived from the sale of Opposer's Goods under Opposer's Marks, for each year from 1994 to the present.

RESPONSE: Opposer objects to this interrogatory as overly broad and unduly burdensome in requesting information dating back nearly twenty years. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer's possession, custody and control. Opposer further objects to this interrogatory to the extent it is seeking the production of commercially sensitive business information. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to responsive, non-privileged documents produced herewith at CFN ____, which has been designated "CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE" in accordance with the Stipulated Protective Order.

Interrogatory No. 24. State Opposer's total annual expenses incurred in connection with the marketing, advertising, and promotion of Opposer's Goods under Opposer's Marks for each year from 1994 to the present.

RESPONSE: Opposer objects to this interrogatory as overly broad and unduly burdensome in requesting information dating back nearly twenty years. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer's possession, custody and control. Opposer further objects to this interrogatory to the extent it is seeking the production of commercially sensitive business information. Subject to and without waiving any objections, Opposer that its advertising and marketing expenses for its Chloraprep products for the years 2006 to the present are as follows. Opposer designates this material as "CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE" in accordance with the Stipulated Protective Order.

- 2006 - \$1.6M (Sept-Dec data only)
- 2007 - \$2.5M
- 2008 - \$1.5M
- 2009 - \$3.8M
- 2010 - \$3.7M
- 2011 - \$4.3M
- 2012 - \$2.7M
- 2013 - \$1.2M (Jan-May data only)
- **Total - \$21.3M**

Interrogatory No. 25. Identify Opposer's anticipated expenditures and budgetary allocation for the manufacture, marketing, and sale of Opposer's Goods under Opposer's Marks for 2013.

RESPONSE: Opposer objects to this interrogatory to the extent that it seeks information that is not relevant to a trademark opposition, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects to the extent the interrogatory is seeking commercially sensitive information. Subject to and without waiving any objections, Opposer states that its marketing budget for its ChloraPrep products for 2013 is \$3.6 million, and designates such information as commercially sensitive/trade secret information pursuant to the Stipulated Protective Order entered in this proceeding.

Interrogatory No. 26. Identify all protests, disputes, legal action, proceedings, arbitration, or mediation wherein Opposer's Marks are or were the subject of the dispute, legal action, proceedings, arbitration, or mediation, including, but not limited to, efforts to enforce Opposer's alleged rights in Opposer's Marks through cease-and-desist letters.

RESPONSE:

- 1) *Medi-Flex, Inc. v. Nice-Pak Products, Inc. and Professional Disposables, Inc.*, Case No. 2:06-cv-02015 (D. Kansas)
- 2) *Medi-Flex, Inc. v. Nice-Pak Products, Inc.*, Opposition No. 91168116 (TTAB 2005)
- 3) June 14, 2012 cease & desist letter to Arrow International Investment Corp.
- 4) *CareFusion 2200, Inc. v. Entrotech Life Sciences, Inc.*, Opposition No. 91206 212

Interrogatory No. 27. State facts sufficient to describe each objection of any kind Opposer has made relating to another person or company's use or registration of a mark containing the letter string "CHLOR," or any other mark incorporating the element "CHL" or "CHLO," or any other mark alleged by Opposer to be confusingly similar to Opposer's Marks.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking for a "description" of "facts" that are more readily obtained from documents being produced in this matter. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer's possession, custody and control. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to responsive, non-privileged representative examples included in the documents produced herewith.

Interrogatory No. 28. State facts sufficient to describe each objection of any kind that any Person has made relating to Opposer's use or registration of Opposer's Marks.

RESPONSE: To the best of Opposer's knowledge, no such objections have been made.

Interrogatory No. 29. State whether Opposer has knowledge, direct or indirect, of any instance in which any Person has, by word or deed, suggested a belief that Opposer is, or has been, licensed, sponsored by, or is otherwise associated or connected with Applicant, or that any of Opposer's Goods sold under Opposer's Marks are offered by, or under the control of, or are in any manner licensed, associated or connected with Applicant, or has in any manner been confused, mistaken or deceived as to the origin or sponsorship of Opposer's Goods sold under Opposer's Marks.

RESPONSE: Opposer is not aware of any such instances at this time, but reserves the right to supplement this response as additional information becomes available during discovery.

Interrogatory No. 30. If Opposer has knowledge, direct or indirect, of any instance described or specified in the foregoing Interrogatory No. 26, identify: the date and location of such instance; the Person or Persons with knowledge of such instance; the manner in which Opposer became aware of each such instance; the nature of the instance; the reason or reasons given, if any, for any such confusion or association; and each Document or Thing that pertains, reflects, or refers or relates to such instance.

RESPONSE: This interrogatory, as presently worded, is unanswerable inasmuch as Interrogatory No. 26 does not seek the requested information.

Interrogatory No. 31. Identify each telephone call, invoice, inquiry, comment, order, cancellation, return, letter, or other communication, whether written, electronic, or oral, meant for Applicant or which referred or related to Applicant or to Applicant's Marks, which Opposer has received, initiated, or produced, or which Opposer has in its possession, custody or control, or of which Opposer has otherwise become aware.

RESPONSE: Opposer is not aware of any such instances at this time, but reserves the right to supplement this response as additional information becomes available during discovery.

Interrogatory No. 32. Identify the action(s) taken, if any, in response to such telephone call, invoice, inquiry, comment, order, cancellation, return, letter, or other communication, whether written, electronic, or oral, identified in response to the foregoing Interrogatory No. 28 and each Person who was responsible for, or who participated in, such action(s), if any.

RESPONSE: This interrogatory, as presently worded, is unanswerable inasmuch as Interrogatory No. 28 does not seek the requested information.

Interrogatory No. 33. State the date and describe the circumstances under which Opposer first learned of Applicant and identify all documents and things relating thereto.

RESPONSE: Opposer first learned of Applicant in 2009 when it entered into negotiations regarding a joint development agreement. Responding further, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to responsive, non-privileged documents produced herewith, which has been designated “CONFIDENTIAL – TRADE SECRET/COMMERCIALLY SENSITIVE” in accordance with the Stipulated Protective Order

Interrogatory No. 34. State the date and describe the circumstances under which Opposer first learned of Applicant’s Marks and identify all documents and things relating thereto.

RESPONSE: Opposer first learned of Applicant’s Marks during a review of the Official Gazette in June 2012.

Interrogatory No. 35. State whether Opposer has ever discontinued use, in any geographic area or in any channel of distribution, in United States commerce of any of Opposer’s Marks on or in connection with any of Opposer’s Goods.

RESPONSE: No.

Interrogatory No. 36. Identify each investigation, consumer or market-research study, survey, poll, or other inquiry conducted by, or on behalf of, Opposer that refers or relates to Opposer, Opposer’s Marks, Applicant, or Applicant’s Marks.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking for the

“identification” of information that is more readily obtained from documents being produced in this matter. Opposer further objects to this interrogatory to the extent that it seeks information that is not in Opposer’s possession, custody and control. Subject to and without waiving any objections, and pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to responsive, non-privileged documents produced herewith, which may have been designated “CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE” in accordance with the Stipulated Protective Order.

Interrogatory No. 37. Identify by Registration No. or Application Serial No. all trademarks or service marks either registered or applied for with the United States Patent and Trademark Office of which Opposer is aware that contain the letter string “CHLOR” or “CHLO.”

RESPONSE: Opposer objects to this interrogatory as seeking information that is overly broad and unduly burdensome inasmuch as there is no international class restriction on the request, and because the information is readily obtainable from public records.

Interrogatory No. 38. Identify all uses in United States commerce of trademarks, service marks, or other designations of which Opposer is aware that contain the letter string “CHLOR” or “CHLO.”

RESPONSE: Opposer objects to this interrogatory as overly broad and unduly burdensome inasmuch as there is no restriction as to the types of goods and or services.

Interrogatory No. 39. Identify each and every product currently being marketed by a third party that is competitive with any product that will be sold under any of Opposer’s Marks.

RESPONSE: Opposer objects to this interrogatory to the extent it is asking for the “identification” of information that is more readily obtained from documents being produced in this matter. Subject to and without waiving any objections, Opposer states that its primary competitors for its ChloroPrep products are 3M (DuraPrep, Ioban, Tegaderm, Avagard), PDI (Prevantics) and Johnson & Johnson (Biopatch). Pursuant to Fed. R. Civ. Pro. 33(d), Opposer refers Applicant to responsive, non-privileged documents produced herewith, which may have been designated “CONFIDENTIAL – TRADE SECRET/COMMERCIALY SENSITIVE” in accordance with the Stipulated Protective Order.

Interrogatory No. 40. Identify all persons who were consulted or had more than a clerical role in the preparation of the answers or responses to the foregoing interrogatories or in

the obtaining of information in connection with these interrogatories or in the responses to Applicant's First Set of Requests for Production of Documents, and state the nature and extent of participation of each such Person.

RESPONSE: Opposer objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or is attorney work product. Subject to and without waiving any objections, Opposer states that Michael Frazier, Manager, E-Discovery & Litigation, CareFusion, was the primary person responsible for obtaining information responsive to Applicant's discovery requests.

Dated: July 15, 2013

Respectfully submitted,

/s/ Joseph R. Dreitler

Joseph R. Dreitler

Mary R. True

DREITLER TRUE LLC

137 East State Street

Columbus, Ohio 43215

Telephone: (614) 535-6355

Facsimile: (614) 241-2169

Email: jdreitler@ustrademarklawyer.com

mtrue@ustrademarklawyer.com

Attorneys for Opposer

CareFusion 2200, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **OPPOSER's RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES** has been served by electronic mail upon Applicant's attorney of record in this proceeding on this 16h day of July 2013, at the following email address:

Lisa M. Martens martens@fr.com
Erin M. Hickey hickey@fr.com
Fish & Richardson PC
12390 El Camino Real
San Diego, CA 92130

Mary R. True

Exhibit J

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF Trademark Application Serial Nos. 85/499349; 85/499345;
85/499337 and 85/499332**

DATE OF PUBLICATION: May 29, 2012

Carefusion 2200, Inc.,

Opposer,

**Combined Opposition No: 91-
206,212**

v.

Entrotech, Inc.

Applicant

GENERAL OBJECTION

1. Pursuant to Trademark Rule 405.02(e), 37 CFR § 2.120(d)(1), Opposer objects to Applicant's Second Set of Interrogatories as exceeding the number of Interrogatories, including subparts, permitted under Trademark Rule 2.102(d)(1). Applicant's First Set of Interrogatories, with subparts, comprised 104 separate requests. Applicant's Second Set of Interrogatories is comprised of at least 147 separate requests.

2. Opposer objects generally to Applicant's Second Set of Interrogatories, as well as to many of the topics identified in Applicant's 30(b)(6) Notice to Opposer and Second Set of Requests for Production of Documents, on the grounds that they are harassing and seeking information that is of no relevance in a trademark opposition. The issues in this Opposition are priority and whether Applicant's eventual use of the Opposed Marks on the goods set forth in its ITU applications is likely to cause confusion with Opposer's Chloraprep and

Chlorashield marks on the goods set forth in those registrations. Issues relating to Opposer's development and ability to develop products are of no relevance – even though issues relating to *Applicant's* capabilities to develop and market such products are directly relevant to the claims set forth herein. As the Board noted in granting Opposer's Motion to Compel, information and documents as to whether Applicant had “a *bona fide* intention to use its subject marks in commerce in association with the identified goods at the time it filed its involved applications . . . are directly relevant to the issue of whether applicant has a demonstrated capacity to produce the medical products set forth in its application under its subject marks as of the time its involved applications were filed or has taken steps necessary to develop and market such products since the filing date of the applications.” Applicant's last-minute “tit-for-tat” discovery tactics are unduly burdensome and constitute harassment.

Dated: October 21, 2014.

Respectfully Submitted,

DREITLER TRUE LLC

/Mary R. True/
Joseph R. Dreitler
Mary R. True
137 E. State St.
Columbus, OH 43215
Telephone: 614-545-6355
Facsimile: 614-241-2169
E-mail: jdreitler@ustrademarklawyer.com
E-mail: mtrue@ustrademarklawyer.com

*Attorneys for Opposer
CareFusion 2200, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2014, a true and correct copy of the foregoing was served via electronic mail upon Erin Hickey at hickey@fr.com.

/s/ Mary R. True
Mary R. True